

## UNITED STATES BANKRUPTCY COURT

## NORTHERN DISTRICT OF CALIFORNIA

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4 In Re: ) Case No. 19-30088-DM  
5 PG&E CORPORATION AND PACIFIC ) Chapter 11  
6 GAS AND ELECTRIC COMPANY )  
7 Debtors. ) San Francisco, California  
 ) Monday, June 8, 2020  
 ) 9:30 AM  
 )  
8 ORAL ARGUMENT RE:  
CONFIRMATION HEARING

9 TRANSCRIPT OF PROCEEDINGS  
10 BEFORE THE HONORABLE DENNIS MONTALI  
11 UNITED STATES BANKRUPTCY JUDGE

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24 Proceedings recorded by electronic sound recording;  
25 transcript provided by transcription service.

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1                   SAN FRANCISCO, CALIFORNIA, MONDAY, JUNE 8, 2020, 9:30 AM

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3                   (Call to order of the Court.)

4                   THE CLERK: This is the Bankruptcy Court for the  
5 Northern District of California, court is now in session. The  
6 Honorable Dennis Montali presiding.

7                   And I'll bring in Mr. Karotkin now.

8                   THE COURT: And Mr. Julian after that, please.

9                   THE CLERK: Yes. Yes, Your Honor.

10                  Mr. Karotkin is joining now, and Mr. Julian is joining  
11 now.

12                  THE COURT: Good morning, Mr. Karotkin.

13                  MR. KAROTKIN: Good morning, Your Honor. Can hear you  
14 fine.

15                  THE COURT: Good.

16                  And Mr. Julian, tighten your tie. Why don't you both  
17 state your appearance for the record, please.

18                  MR. KAROTKIN: Sure. I'm Stephen --

19                  MR. JULIAN: Robert Julian, Baker & Hostetler, for the  
20 TCC, Your Honor, and good morning.

21                  THE COURT: Good morning.

22                  MR. KAROTKIN: Good morning. Stephen Karotkin, Weil,  
23 Gotshal & Manges, for the debtors.

24                  THE COURT: So Mr. Karotkin, we heard over the weekend  
25 from your colleague Ms. Liou about the need to spend some time

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1 on OCC issues this morning, and I also know somebody was busy  
2 yesterday filing a new plan. Those are matters that I'll hear  
3 from you in due course, including your suggested schedule, but  
4 I -- the reason I wanted to start with the two of you today is  
5 I -- there's a fair amount of confusion in my mind, and perhaps  
6 in others, based upon some things I read over the weekend,  
7 particularly Mr. Ziman's two declarations, but most  
8 specifically the more recent one.

9                   And then, of course, the sixty-four dollar question.  
10 I think I know the answer, Mr. Karotkin, but one of the slides  
11 Mr. Julian put up last Friday was page 14 that proposes  
12 language in any confirmation order which is pretty clear. Does  
13 the debtor agree to that language if I am inclined to sign a  
14 confirmation order in the next few days?

15                   MR. KAROTKIN: No, sir.

16                   THE COURT: Okay.

17                   Mr. Julian, with that, I don't want to argue about  
18 that, I want to ask you, clarify one phrase. In the fourth  
19 line of that slide, the words "plan funding documents" are  
20 capitalized, but I -- I'm not sure that those three words  
21 together are a defined term somewhere. Did I miss it or is  
22 that a phrase that is not a defined term?

23                   MR. JULIAN: There is a -- there is reference. It's  
24 not defined precisely, but there is reference to the types of  
25 documents, and I can --

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1                   THE COURT: That's fine. That's good.

2                   MR. JULIAN: -- I don't have that handy.

3                   THE COURT: That's a good enough answer. I had my  
4 homework assignment, and the plan is long and the supplements  
5 are long and the documents are long, and I just wanted to make  
6 sure, if I am called upon to make this -- the ruling, I need to  
7 make sure I'm looking at the right documents.

8                   So Mr. Julian, let's -- I've got a couple other  
9 questions that are for both of you, but I really need to put  
10 this back to you.

11                  MR. KAROTKIN: Your Honor, can I interrupt?

12                  THE COURT: Yes, sir.

13                  MR. KAROTKIN: It's my understanding that, as we  
14 speak, mediation is going on with former Bankruptcy Judge  
15 Newsome with respect to the registration rights agreement, so  
16 it may be helpful not to get into those issues at this time.

17                  THE COURT: No, I -- I agree with you. It's -- I  
18 promise you I wasn't going to get into it, I was just asking  
19 for a specific clarification, and obviously, on my wish list is  
20 that that mediation is successful. And so I promise you, I'm  
21 not inviting to invade the mediation privilege. In fact, to  
22 the contrary, I want to keep it going.

23                  MR. KAROTKIN: I guess, Your Honor, my concern is to  
24 the extent that -- I don't want to put words in your mouth, you  
25 may be weighing in on some of these issues that may influence

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1 the mediation.

2 THE COURT: I want to clarify some terms that are  
3 confusing me. And I'm looking -- I'm looking at Mr. Ziman's  
4 declaration that he filed on May 22nd, and in particular the  
5 attachment, which is doc 7512-1, entitled "Rights Offering  
6 Procedures."

7 MR. KAROTKIN: Yes.

8 THE COURT: And I may be confused, but if I'm  
9 confused, maybe other people are confused. The text of the  
10 rights offering procedures suggest that if one is a  
11 shareholder, one has the right to sign up to purchase  
12 additional subscriptions.

13 MR. KAROTKIN: Your Honor, can I -- I think I can  
14 clarify this really quite quickly. The rights offering  
15 procedures have nothing to do with the registration rights  
16 agreement. They are completely separate. The rights offering  
17 procedures are procedures that would be implemented under the  
18 circumstances where the debtors made a determination -- again,  
19 which is in their discretion -- to pursue a rights offering  
20 with respect to a new equity raise as part of the nine billion  
21 dollars of equity to be raised in connection with emergence.  
22 It has absolutely nothing to do with the registration rights  
23 agreement that is being mediated as we speak and that was the  
24 subject of discussion last week. They are completely  
25 different, completely unrelated. So hopefully, that's helpful.



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1                   THE COURT: Well, it's helpful, and it's exactly what  
2 I thought and you confirmed something. And so what I'm trying  
3 to find is where I find the source of this dispute about the  
4 registration rights. And again, I respect your request that I  
5 not ask to develop it in any fashion, and I won't, and I  
6 promise you I won't, and I don't want Mr. Julian to feel he  
7 needs to argue his case, but I went back -- and so this kind of  
8 segues into another question.

9                   I got to wait until you're looking at me, Mr.  
10 Karotkin. That's one of the -- one of the funny things about  
11 Zoom. People turn your back on you, you have to wait until  
12 they come back.

13                  MR. KAROTKIN: I was -- I'm sorry. I was trying to  
14 get a document off the floor.

15                  THE COURT: It's okay. And I'm only kidding. I'm not  
16 bothered by what you're doing.

17                  Okay. But that gets to a related question. And you  
18 made a statement on Friday that threw me for a loop, and that  
19 was that, somehow, the underwriters or the company wants to  
20 start the public offering process as early as Friday or Monday.  
21 And I couldn't find anything in Mr. Ziman's two declarations,  
22 and in particular his more recent one, that tells me anything  
23 about that. And so what I don't know is where does that come  
24 from other than your statement? And again, I don't think you  
25 were deceiving me, I just want to know why that's so.

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1                   And then the second question is how can the public  
2 offering process even begin if there isn't a resolution of the  
3 rights that might pass by mediation or court resolution to the  
4 fire survivors? In other words, how can that start without the  
5 rights issue being settled?

6                   MR. KAROTKIN: I think, Your Honor, you have to  
7 distinguish between the two types of funding raises that are  
8 going to be conducted in connection with the implementation to  
9 the plan. And one element of that, a substantial element of  
10 that, is a debt offering, which is not at all dependent on the  
11 rights offering. I'm sorry, on the registration rights  
12 agreement.

13                  THE COURT: No, I know that. I know. I'm not talking  
14 about the debt offering, I'm talking about the equity raising.  
15 I can --

16                  MR. KAROTKIN: The equity raise, I believe, would  
17 be -- a prerequisite to that would be a resolution of the  
18 registration rights agreement issues, but that could start a  
19 little later, I'm told, but is essential. And I can get into  
20 this more later for purposes of the debt raise, that certain  
21 approvals have been ordered.

22                  THE COURT: I'm not worried about the debt raise. The  
23 people know how to do that. Equity raise --

24                  MR. KAROTKIN: But again, Your Honor, in order to do  
25 the debt raise, they do need -- they do need certain approvals

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1 from Your Honor.

2 THE COURT: Okay. All right. You've clarified what I  
3 thought was the case and that signals to me that if there's a  
4 mediated resolution of the dispute that's extant between the  
5 TCC and the debtors, that solves the problem in the sense that  
6 the equity process will take its due course. If there isn't a  
7 mediated resolution, I believe Mr. Julian made the case that  
8 even if I were to sign a confirmation order, there would be a  
9 provision that it would come to the court for judicial  
10 determination before there could be an effective date.

11 Is that -- am I correctly understanding your view on  
12 that, Mr. Julian?

13 MR. JULIAN: Your Honor, I was finding the -- I found  
14 the definition for you, and if you could restate your question  
15 for me, since I was reading. I apologize.

16 THE COURT: Well, the question -- and I'm just -- I'm  
17 just reaffirming something that you said in the argument,  
18 that -- and this presumes what you and I hope, or at least I  
19 hope, doesn't happen. I hope there is a mediated resolution  
20 and I don't have to worry about it, but if there's not a  
21 mediation resolution and I am persuaded to sign an order or a  
22 memorandum or something to say that I'm approving the plan,  
23 then your position -- and I forgot the document, but I believe  
24 it was in one of your slides, or maybe it was in your brief --  
25 that even if I were to sign a confirmation order, there would

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1 have to be a judicial resolution if there's not a consensual  
2 one on the rights issue, before the plan can become effective?

3 MR. JULIAN: Yes.

4 THE COURT: Okay.

5 MR. JULIAN: Yes.

6 THE COURT: So you still believe that. And so if I --  
7 if I were to say, well, okay. I can't sign the proposed order  
8 that you want because the debtor contests it, but I can sign  
9 the order if I'm satisfied that all the other requirements have  
10 been met, and then that would start -- that would open a window  
11 that I presume would be open at least until your side, or some  
12 side, declared the plan dead, and there would never be an  
13 effective date. But assume if the only issue was to make a  
14 decision on the rights question, it would be something done, in  
15 the best-case, before the plan -- or excuse me, before the  
16 contractual deadline for an effective date.

17 MR. KAROTKIN: Your Honor, if I can --

18 MR. JULIAN: Yes, and --

19 THE COURT: Well, let him finish that first, yeah.  
20 Okay.

21 MR. KAROTKIN: I'm sorry.

22 MR. JULIAN: And our point was we believe,  
23 respectfully, that the confirmation order, in order to be  
24 feasible, must state that the TCC and consenting fire  
25 professionals have the rights in the RSA to consent to all

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1 equity and debt financing documents, plan documents. And when  
2 I have now found the definition of plan documents, it's in  
3 paragraph NN, as in November November, in the debtors' proposed  
4 confirmation order, wherein it describes all manner of plan  
5 documents that are necessary, including all financing documents  
6 necessary to do the financing. And of course, a registration  
7 agreement is a document that you need to do the equity  
8 financing.

THE COURT: My only distinguishing was that the word  
9 "funding" is a capitalized term in your slide. Let's not get  
10 bogged down with that.

12 Mr. Karotkin, again, I want you to weigh in. I mean,  
13 I'm not -- I'm not going to make any decisions today, and I  
14 promise you, I --

15 MR. KAROTKIN: I know.

16 THE COURT: Just tell me -- I think you both have  
17 educated me for the questions that I had that arose over the  
18 weekend, but go ahead and tell me what you want to say.

19 MR. KAROTKIN: Okay. I think I need to clarify that  
20 with respect -- and I think I indicated earlier, in order to  
21 conduct the equity raise for purposes of emergence, we would  
22 need the registration rights agreement finalized. And in view  
23 of the timing to do that, taking into account the blackout  
24 period that I mentioned to you last week, and in order to get  
25 this plan to go effective on a timely basis, we would need to

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1 start that equity raise, I believe -- I believe -- and I can  
2 get you more information, like, within two weeks, so I --

3 THE COURT: Okay.

4 MR. KAROTKIN: -- (indiscernible) --

5 THE COURT: But that's another way of saying go  
6 mediate a resolution in the next two weeks because if there's  
7 no mediated resolution, I won't be in a position to make a  
8 ruling, obviously, and therefore, the equity raised might be  
9 put on the back burner for a time, and there's nothing I can do  
10 about that.

11 MR. KAROTKIN: Well, Your Honor --

12 THE COURT: Unless you want me to have a deadline for  
13 the mediation and say, I'll make a ruling, you know, some  
14 particular day. I don't think that's --

15 MR. KAROTKIN: Well, we may have to do that, Your  
16 Honor, if this plan is going to be funded and go effective on a  
17 timely basis. But my suggestion is let's let the mediation  
18 play out, certainly for today, to see where we are, but it may  
19 be -- as you said, it may be we must call on you to make a  
20 determination with respect to that issue on a rather expedited  
21 basis.

22 THE COURT: Okay. So my last question, really, is not  
23 part of this controversy between the committee and the debtor.  
24 It goes back to the other point that you stated on Friday, Mr.  
25 Karotkin, the so-called blackout and the need to start this

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1 process immediately. I could not find any reference to that,  
2 at least in Mr. Ziman's declarations, so where did it come  
3 from?

4 MR. KAROTKIN: There is not --

5 THE COURT: And what am I supposed to do? Again, I  
6 don't think you are deceiving me, but where is it in the record  
7 that I know what to -- where that all comes from?

8 MR. KAROTKIN: There is nothing in the record, Your  
9 Honor, other than my remarks. We can be happy to bring the  
10 investment bankers back and explain to you how that works. It  
11 really isn't, as I said, in connection with the equity raise.  
12 It doesn't have -- as far as I understand it, it doesn't have  
13 anything to do with whether or not the plan complies with the  
14 requirements of 1129(a). It is just a fact of life with  
15 respect to raising the funding that will be necessary for  
16 emergence, in order for that to be raised in the most  
17 economical manner for the benefit of all parties-in-interest.  
18 So it doesn't mean --

19 THE COURT: Let me stop you. I got it. I mean, I --  
20 You're saying the same thing over again. If what you're really  
21 saying is you would like to put some pressure on the TCC to  
22 come to an agreement, fine, they can do it, but they can try to  
23 put pressure on the debtor, too, and I'm not getting into that  
24 discussion.

25 MR. JULIAN: But Your Honor, I would like to respond

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1 to your point about Mr. Ziman's declaration.  
2 So there is no evidence in the record of what the  
3 registration rights agreement is or what the underwriters said,  
4 and I was precluded, as you know, from going into it because of  
5 the mediation privilege, which is why I spent my time with Mr.  
6 Ziman stating to him, and I can't talk to you about those  
7 matters, right, because they're subject to a mediation  
8 privilege --

9 THE COURT: Right.

10 MR. JULIAN: -- and he agreed.

11 THE COURT: I know.

12 MR. JULIAN: So my rights to cross-examine and to  
13 develop evidence were denied. I'm not complaining, but the --  
14 what's sauce for the goose is sauce for the gander, and so --

15 MR. KAROTKIN: Your Honor --

16 THE COURT: Well, let him finish, Mr. Karotkin.

17 MR. KAROTKIN: I'm sorry. I'm sorry.

18 MR. JULIAN: Okay. And so since we can't go into what  
19 that advice was and it wasn't in writing, under the best  
20 evidence rule, you really don't have any evidence in front of  
21 you.

22 Look. This is playing out in mediation. We've been  
23 trying for two months. If it works, Mr. Karotkin and I are  
24 going to be happy. If it doesn't work, though, we're going to  
25 need the two provisions that we recommended. One is that our

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1 rights are preserved --

2 THE COURT: Okay.

3 MR. JULIAN: -- our consent rights.

4 THE COURT: Don't reargue your case. I got it. I  
5 don't want you to reargue it and I'll tell you another reason  
6 why. I don't know if your personal emails are out there, but I  
7 must have gotten ten emails over the weekend from survivors who  
8 heard Mr. Julian's arguments on Friday and are now emailing me  
9 directly, giving them -- me their views on the horribles that  
10 they perceive. I'm not going to -- I'm not criticizing those  
11 people for communicating with me. I'm not going to respond to  
12 them, I just -- I assume that you both, and your clients and  
13 your fellow counsel are aware of this, too, it is a -- it is  
14 a -- another thing that's a little -- adds to the critical  
15 nature of this.

16 I trust and respect both of you, and when Mr. Karotkin  
17 says the underwriters need to do this to start this equity  
18 process, I don't question his statement, I just say, okay. if  
19 that's the case, maybe it will happen, maybe it won't. And if  
20 the mediation is unsuccessful, I'm not going to speculate on  
21 what happens next, and I'll leave it at that.

22 So I'm prepared to conclude this portion of the  
23 discussion now and move on to the rest of the things we have to  
24 attend to, unless either of you feel obliged to add anything  
25 further, but I'm asking you not to, and --

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1                 Mister --

2                 MR. KAROTKIN: Well, Your Honor, I feel obliged to say  
3 something because what Mr. Julian said about Mr. Ziman's  
4 testimony has nothing whatsoever to do with what I was talking  
5 about. I was talking the timing of the -- about an equity  
6 raise and why these things have to be resolved and he was  
7 talking about examining Mr. Ziman with respect to the actual  
8 provisions of a registration rights agreement. That's not what  
9 I was talking about. I was talking simply about timing, and I  
10 don't know how he tried to convert that into something I wasn't  
11 even talking about, but --

12                THE COURT: Well, okay.

13                MR. KAROTKIN: -- that's where we are.

14                THE COURT: Maybe that's your take on it. My  
15 question, if I were having a conversation with Mr. Ziman, I  
16 might ask for some clarification on things that were unclear to  
17 me. It's the -- it's the ambiguity or the awkwardness of this  
18 whole way that we're dealing with it. I can't absorb  
19 everything an expert like Mr. Ziman says, then listen to other  
20 people cross-examine, then have a conversation because I  
21 wouldn't have -- I wouldn't have thought to ask him about a  
22 blackout for securities purposes because it hadn't come up.

23                So look. One more time. I hope the mediation is  
24 successful. If it is not, you two and others will tell me what  
25 I'm supposed to do about it, okay? For now, I won't take any

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1 action on it and nobody has to do anything.  
2 And Mr. Julian, unless you want to stick around for  
3 what's next, I'm going to excuse you from the panel, but I'm  
4 not trying to throw you off and -- but I'm going to ask Mr.  
5 Karotkin on other subjects what he believes is the proper  
6 agenda for the rest of this morning, if not beyond. So are you  
7 good to go or do you want to stay here? What's your pleasure,  
8 Mr. Julian?

9 MR. JULIAN: If it's not going to come up again, Your  
10 Honor, I'm good to go. I may raise my hand to come back on  
11 something, but --

12 THE COURT: We'll try to -- we'll try not to exclude  
13 you.

14 MR. JULIAN: Thank you, Your Honor.

15 THE COURT: And on that subject, Mr. Karotkin, I'd  
16 make another statement, too, there. I personally don't like  
17 having to be perceived as rude to people. If we were in an  
18 old-fashioned courtroom and a fire survivor was in the  
19 courtroom and he or she raised a hand or said may I say  
20 something, I would do my best to let that person speak. With  
21 the Zoom world, when someone like Mr. Abrams or some of the  
22 other individuals who have spoken raise their hand, I wish, in  
23 a perfect world, I could accommodate them. I simply can't.

24 So I'm saying this to all the people who are listening  
25 in this case that I -- I'm just not going to turn this into an

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1 open discussion. I'm going to stick with the agenda because  
2 there are a number of counsel representing clients who have a  
3 right to be heard on arguments that are relevant to the  
4 confirmation question.

5 So let me ask you both. There's some noise going on  
6 outside my room -- my house here, that -- is that coming  
7 through on the speaker or that's interfering with your -- are  
8 you able to me?

9 MR. KAROTKIN: I can hear you fine. I do hear that  
10 noise, but it's fine.

11 THE COURT: It's going away. We had a barking dog the  
12 other day, but I couldn't solve that problem. Not my dog.

13 Mr. Karotkin, what's your suggested agenda for the  
14 next couple of hours?

15 MR. KAROTKIN: Okay. So Your Honor, before we get --  
16 we get to the actual, remaining items to be addressed in the  
17 confirmation hearing, I would like to bring the Court up to  
18 date with respect to a proposed amendment to the equity  
19 backstop commitment letters and the announcement made this  
20 morning by the debtors with respect to their equity raise  
21 strategy. There was an AK filed this morning, and I believe a  
22 press release with respect to that, and I thought it would be  
23 appropriate to briefly bring the Court up to date on that item,  
24 if I may.

25 THE COURT: All right.

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1                   MR. KAROTKIN: Okay. First, Your Honor, the amendment  
2 to the backstop commitment letters, which I just mentioned,  
3 will be brought before the Court for approval. Unfortunately,  
4 I think we will need to do that on an expedited basis. We may  
5 be filing a motion today, if not today, then tomorrow. I can  
6 assure Your Honor that the amendment is advantageous for the  
7 debtors, all stakeholders, and in particular, Your Honor,  
8 advantageous, in the debtors' view and all parties' view, to  
9 the fire victim trust, as a future major stockholder, because  
10 the amendment will facilitate the debtors' ability to affect a  
11 marketed public offering and accelerate its return as a normal  
12 capital markets participant, post-emergence from Chapter 11.

13                  And importantly, Your Honor, I want to assure the  
14 Court and other parties that the proposed amendment that we  
15 will be bringing to Your Honor for approval has no impact  
16 whatsoever -- no impact, on the percentage of the reorganized  
17 PG&E equity that will be owned by the fire victim trusts on the  
18 effective date, pursuant to the plan.

19                  Your Honor, you're well aware of the fact, and in fact  
20 you approved the existing backstop commitment letters under  
21 which the debtors have the right to call upon, if necessary, up  
22 to nine billion dollars in equity financing to fund the plan;  
23 that backstop being subject to the conditions set forth in the  
24 backstop commitment letters, again, which you approved.

25                  Prior to the proposed amendment, those letters

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1 contemplated a three-tiered equity offering structure that  
2 provided for certain thresholds -- certain stock price  
3 thresholds, as a condition to the debtors' ability to effect a  
4 marketed offering or a rights offering. While the company  
5 believed at the time that the existing commitment letters it  
6 entered into and the thresholds contained in those letters  
7 could be met, due to the recent market dislocations as a result  
8 of COVID, it's become apparent that the thresholds required  
9 under the existing backstop letters to execute a marketed  
10 offering could not be met, or would not be able to be met, that  
11 share price being, approximately, a threshold of 18 to 19  
12 dollars a share versus the current trading price of  
13 approximately \$12.50, I think, at the close on Friday.

14 Additionally, the current stock price presents a  
15 significant challenge to effecting a successful rights  
16 offering, if the debtors chose to do so. Again, that was  
17 totally within the debtors' discretion at the required minimum  
18 price threshold that was provided for in the existing backstop  
19 commitment letters.

20 Accordingly, Your Honor, absent the proposed amendment  
21 to the backstop letters, it was quite apparent that a marketed  
22 public offering, which is the most optimum approach to raising  
23 equity capital, or a rights offering, could not be pursued and  
24 that drawing under or calling upon the existing backstops would  
25 be the only alternative necessary to fund the plan, and that

PG&E Corporation and Pacific Gas and Electric Company  
1 would be at an approximate share price, under the terms of the  
2 backstop letters, of about \$7.50 a share.

3                 Although the existing backstop letters certainly  
4 provide the debtors with the access to the needed capital to go  
5 effective with the plan, drawing on those backstops, as opposed  
6 to effecting a marketed offering, would further depress the  
7 stock price because of the lower backstop price and delay the  
8 transition of the company's shareholder base to more  
9 traditional utility investors.

10                 It's in that context, Your Honor, that the debtors  
11 engaged in negotiations with certain key backstop parties to  
12 achieve an amendment that would permit the debtors to execute a  
13 marketed public offering despite the market dislocations and  
14 avoid drawing on the backstops at a lower backstop equity price  
15 than could be accomplished in a marketed offering. And  
16 although the backstop has always served a very important  
17 purpose in assuring the availability of the equity or the plan  
18 financing, the debtors have always maintained that the most  
19 beneficial -- as I mentioned earlier, the most beneficial  
20 alternative is to raise the nine billion of equity capital  
21 pursuant to a public market offering, as opposed to drawing on  
22 the backstop, for the following reasons. And again, all of  
23 this will be explained in more detail in the motion we file  
24 with Your Honor seeking to approve the amendment.

25                 And those reasons are that a marketed offering should

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1 allow the debtors to raise equity at a significant premium to  
2 the backstop price, thereby avoiding additional dilution to  
3 existing shareholders and maximizing the value of reorganized  
4 PG&E common stock, including the stock that's going to be  
5 issued to the fire victim trust under the plan, and investors  
6 in a marketed offering are more traditional utility investors,  
7 providing momentum to support a higher valuation, again, that  
8 would benefit all shareholders. And a marketing offering,  
9 again, would position -- would put the debtors in a better  
10 position for a future equity raise.

11 As the debtors reported this morning, the debtors and  
12 their requisite backstop parties have agreed to an amendment  
13 that will increase the likelihood of raising the nine billion  
14 dollars of equity through a marketed offering, including the  
15 removal of the price thresholds to which I referred earlier.  
16 Of course, the backstop will still be there in the event we  
17 need it. That's not going away. It will still be there.

18 In consideration of the amendment that also, Your  
19 Honor, addresses certain other consent rights under the  
20 existing backstop letters, relating, for example, to the CPUC  
21 plan OII, I believe, the parties have agreed to provide the  
22 backstop parties with a fee of 50 million shares, but  
23 importantly, Your Honor, only in the event the public offering  
24 is affected. They would only get the fee if the public  
25 offering is affected. Again, it's payable only in shares of

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1 reorganized PG&E, so it has absolutely no impact on the cash  
2 needs to emerge from Chapter 11. And as I said, Your Honor --

3 THE COURT: Well, you also -- excuse me -- you also  
4 said it doesn't impact the 20.9 percent that goes to the  
5 victims' trust, right?

6 MR. KAROTKIN: Absolutely. Absolutely correct.

7 THE COURT: So then the new shares come out of the  
8 other eighty percent?

9 MR. KAROTKIN: Well, that's correct. The new shares,  
10 as I said, don't affect the number of shares to go to the fire  
11 victim trust under the plan in that formula. And actually, I  
12 was just going to say that again when you chimed in. And in  
13 addition, as I said, the existing shareholders are benefitted  
14 by a marketed offering, which would have less dilution.

15 In addition, we also announced this morning, Your  
16 Honor, in addition to the amendment, that the debtors already  
17 have obtained commitments for three-and-a-quarter billion  
18 dollars of common stock investments from a group of five  
19 lending -- from a group of five long-term investors, subject to  
20 the amendment to the backstop agreement being approved. And  
21 the debtors are confident that the remaining five-and-three-  
22 quarters billion dollars of equity contemplated by the plan  
23 will be raised if the amendment is approved and the plan is  
24 confirmed.

25 As I said, the amendment is subject to Your Honor's

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1 approval. We will be filing a motion shortly. And I can also  
2 say, Your Honor, that if the amendment is approved, as we  
3 believe it should be, based upon some of the items I just  
4 mentioned, under those circumstances where it is approved,  
5 there will be no rights offering.

6 So that is where we are, and we thought it important  
7 to bring the Court up to date about the announcement.

8 THE COURT: I muted myself for a moment because there  
9 was still some outside noise. So if that, what you just  
10 described, goes forward, the rights offering that Mr. Ziman  
11 previously described, that goes away.

12 MR. KAROTKIN: That's correct.

13 THE COURT: And the other issue that's still  
14 negotiated, as you pointed out, that's different.

15 Okay. When do you -- well, I presume that both  
16 official committees will have an opportunity to absorb what  
17 you've just summarized and they'll be able to see the  
18 underlying documents?

19 MR. KAROTKIN: Yes, and in fact we had a conversation  
20 with representatives from the TCC yesterday afternoon to bring  
21 them up to date on where we were prior to the announcement.  
22 And they are, I'm told, evaluating it.

23 THE COURT: When do you want it heard?

24 MR. KAROTKIN: I think we're looking to get it filed  
25 today or tomorrow, and we would like it heard next Tuesday, if

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1 that's possible.

2 THE COURT: Okay. Let's assume that's possible. You  
3 know, my own personal schedule is such that I thought we were  
4 going to be finished with argument on Friday. Obviously we're  
5 not. Maybe we'll be finished with it today, and then the  
6 matter is under advisement for me, and whether I have to act on  
7 an expedited basis or not is another story.

8 Okay. So well, offhand, there's no reason why I can't  
9 commit and agree with you to have that heard next Tuesday.  
10 Let's leave the fine point to a little later in the day. My  
11 courtroom deputy, Ms. Parada, can be in touch with Ms. Liou or  
12 Ms. Kim.

13 One other thing that you promised me an answer on, and  
14 I presume it's the same question, that even if this change that  
15 you just described goes into effect, there's still a five-and-  
16 a-half-billion-dollar public offering that has to be  
17 contemplated or implemented, and that involves the dark-out  
18 black-out period and all of the other stuff, right?

19 MR. KAROTKIN: That's my understanding, yes, sir.

20 THE COURT: Yeah, so what is needed from me? Can it  
21 be done without an order but nevertheless a judicial published  
22 or public decision, such as a memorandum that says I will do  
23 this once the order is in final form?

24 MR. KAROTKIN: I don't believe, Your Honor, that --  
25 first of all, as I said before, I think we need the

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1 registration rights agreement issue resolved before the  
2 marketed offering can take place.

3 And with respect to the other financings, we would  
4 need an order entered authorizing those to go forward in order  
5 to start the marketing effort on those.

6 Now, one alternative, Your Honor, that we've  
7 contemplated to address these issues, and of course the burden  
8 that's being placed on you with respect to these matters, is it  
9 may be, if you are willing to entertain it -- again, this  
10 doesn't solve the issue with respect to the registration rights  
11 agreement, but we could present you with a proposed order  
12 authorizing the financing, basically excising from the proposed  
13 confirmation orders those particular provisions.

14 That might be another way to move forward that could  
15 work. It will give you a little more time to get a formal  
16 confirmation order entered. It's important for the debtors to  
17 take advantage of the markets. The markets are pretty robust  
18 right now with respect to debt offerings, and I'm told every  
19 point of interest rate is in excess of 100 million dollars to  
20 the debtors and the rate bearers of California.

21 So there's a lot of incentive to move forward with  
22 that. I don't think it would prejudice anybody. None of it  
23 would be -- although certain of those amounts, as we described,  
24 would be funded into escrow, if the effective date doesn't  
25 occur and the plan doesn't go effective, the status quo would

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1 be returned, less a certain amount of fees and less a little  
2 bit amount of interest. But we think that, if we're able to  
3 move forward on this basis, that could be the most practical  
4 way to proceed.

5 THE COURT: Okay. But still, I'm a little unclear  
6 what I would do. You heard me express my concerns Friday about  
7 triggering the finality in the appeal rights. And I understand  
8 what the plan says about what it takes for the plan to be  
9 effective.

10 But I also think that there's a certain public  
11 psychology to what happens, and if I say I will approve -- I  
12 will confirm the plan, but there are still issues about the  
13 form of the order -- I mean, think about the various things  
14 that you built into the order of the plan that you filed  
15 yesterday that I haven't even had a chance to look at.

16 And then the kind of things that might -- leave aside  
17 the big issue between the TCC and the debtor that we've talked  
18 about this morning. I'm talking about the little or the  
19 smaller points, the points with the trust, the points with the  
20 securities litigation, the points with whatever's left with the  
21 OCC.

22 I mean, I don't want to be having a lot of these  
23 urgent sessions trying to figure out what the latest version of  
24 a draft order means. And you know, you heard me say before I'm  
25 a great fan of a one-liner order that says the plan's

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1 confirmed, but I know you don't want that, and I'm not going to  
2 insist on it. But it's such a moving target that I don't want  
3 to jeopardize the debtors' opportunity to get to the market,  
4 but I can't trample on the rights of some of the major players  
5 here. And you know who the major players are, and even the  
6 minor players. I mean, even if it's one objector who has one  
7 paragraph that there's a dispute about what goes in the order,  
8 my responsibility is to try to resolve that.

9 So we don't have to solve the problem today.

10 MR. KAROTKIN: Well, can I just briefly address your  
11 remarks?

12 THE COURT: Yeah.

13 MR. KAROTKIN: What I was suggesting as an alternative  
14 would not constitute an order "confirming" the plan in an  
15 appealable order confirming the plan. It would merely  
16 authorize the proposed financing to go forward, just like you  
17 did, for example, when you authorized the debt commitments  
18 several months ago.

19 THE COURT: Okay. That's --

20 MR. KAROTKIN: So it would be similar to that. And  
21 then, as I said, if you were to decide, Your Honor, to confirm  
22 the plan and enter a formal full-blown confirmation order, we  
23 could just incorporate that prior order by reference, and in  
24 that way, again, I don't think the entry of the financing would  
25 really prejudice anybody.

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1                   THE COURT: Okay. Let's assume that that's the  
2 approach. So we'll call it the financing order. It would be  
3 helpful then -- that's something that I would presumably be  
4 issuing once I make the decision on this thing next Tuesday,  
5 right?

6                   MR. KAROTKIN: Well --

7                   THE COURT: The backstop adjustments and the revisions  
8 that you --

9                   MR. KAROTKIN: I think you could do it before then.  
10 Because remember, that's with respect to the equity financing.

11                  THE COURT: Okay. Sorry. Sorry.

12                  MR. KAROTKIN: So I think you could do it before then.  
13 And it's not a long -- I mean, we have a draft order. It's not  
14 long. It's, I think, six or seven pages, and basically  
15 excerpts from the proposed confirmation order, those provisions  
16 relating to approvals of the exit financing and the matters  
17 related to that, so that the people can go out and raise the  
18 money comfortable that what they're doing is authorized by the  
19 Court. And again, if we don't close, we don't go effective,  
20 aside from some interesting fees, I think no harm no foul.

21                  THE COURT: I think that maybe I lost you in your  
22 description of what would come up next week, as far as  
23 adjustments to the backstop commitments, that has the effect of  
24 altering, if not making more favorable, the public equity  
25 raise. But then when you said, based upon the commitment of

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1 five lenders, I understood that to be three-plus billion of the  
2 nine-million-dollar equity raise. Isn't that correct?

3 MR. KAROTKIN: That's correct.

4 THE COURT: Okay.

5 MR. KAROTKIN: And what I'm referring to is the  
6 balance.

7 THE COURT: No, I got you, but what's -- see, I may  
8 have conflated in my own mind the need to get orders that start  
9 the ball running on the equity raise, and you seem --

10 MR. KAROTKIN: No.

11 THE COURT: -- to be describing as more about the debt  
12 financing. Let's proceed your way. If you can get a sign-off  
13 on the debt financing order by at least the two official  
14 committees, that makes it a lot easier. I don't think that  
15 there's a need for a further hearing on that.

16 MR. KAROTKIN: Okay.

17 THE COURT: At least somebody -- well, you need to get  
18 something on the docket, so, on an expedited basis, somebody  
19 has an opportunity to be heard if there is a legitimate concern  
20 about it.

21 MR. KAROTKIN: We will do that, sir.

22 THE COURT: And so again, on the assumption that I've  
23 come to the conclusion that I should confirm the plan, you're  
24 right; I agree with you that an order in place already that is  
25 a financing order that, much like so many other orders in this

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1 case, they are all subject to being of various undoing if  
2 there's no confirmation. I understand that. But that was the  
3 whole point of getting these things out of the way.

4 So I think I'm okay. And so we're clear, and I don't  
5 think you have to educate me any further. Rights offering and  
6 registration and rights of the TCC are different concepts. But  
7 most of the discussion left me somewhat confused. Okay.

8 MR. KAROTKIN: Okay.

9 THE COURT: Let's switch gears, unless you want to say  
10 anything more on this, and go to the subject of an agenda.

11 MR. KAROTKIN: Okay. Now I'm prepared to move to the  
12 agenda for today.

13 THE COURT: Well, you're the drafter of the agenda, as  
14 of now, so who's on the agenda?

15 MR. KAROTKIN: Okay. So this is what I would propose.  
16 As you noted, we did file an amended plan last night which we  
17 think addressed the matters that had been resolved over the  
18 past week or so, and we think that reflects those resolutions.  
19 There are still a couple of things outstanding with respect to  
20 a couple of the provisions, at least, that the states have  
21 raised that we can address later.

22 And of course the issue with the UCC, unfortunately,  
23 we were not able to reach a settlement on that, and so that is  
24 back before Your Honor. So that my suggestion is that that be  
25 the first item that Mr. Bray, and whoever else wants to speak

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1 on that, can argue their objections and their views on that  
2 subject.

3 I think that after that Mr. Johnston would respond to  
4 the PERA objection. And then we will address the remaining  
5 unresolved objections as well as the UCC objection, if that  
6 makes sense.

7 THE COURT: I have a note from my clerk that Mr.  
8 Schiff wants a brief time, and I presume that's related to what  
9 Mr. Bray's going to talk about; is that right?

10 MR. KAROTKIN: That's my understanding.

11 THE COURT: Okay. Well, let's bring Mr. Bray into the  
12 room, and let me take a quick look at the people who have their  
13 hands up. I see Mr. Mintz has his hand up. Mr. Abrams has his  
14 hand up.

15 Mr. Abrams, I'm not going to call on you for now.  
16 Maybe I'll come to you later.

17 Mr. Hallisey, honestly, I'm really not inclined to  
18 revisit the arguments that you raise, but I may be persuaded  
19 later.

20 Mr. Bray, why don't you -- well, why don't you state  
21 your name for the record, and I'll ask you a couple of  
22 questions specifically.

23 MR. BRAY: Sure, Your Honor. Good morning, Gregory  
24 Bray, Milbank LLP, counsel for the official committee of  
25 unsecured creditors.

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1                   THE COURT: So what other counsel are you in touch  
2 with that are likely to want to participate in this phase of  
3 the discussions? Does that include Mr. Mintz, for example? I  
4 mean, I know who his client is and what he represents, but they  
5 haven't been aligned exactly with your committee. Who --

6                   MR. BRAY: Well, Your Honor, we had -- I know that  
7 they're counsel for several of the vendors who want to be  
8 heard. I'm sorry I don't remember everyone's name. But they  
9 have asked you, in the past, they wanted to trail what we were  
10 saying so there was some continuity in the arguments.

11                  I know that I think counsel for Citibank wants to be  
12 heard. I know that counsel for the state agencies and the  
13 municipalities share the concerns we have and they would like  
14 to be heard.

15                  So I can't tell you the exact number of parties, but  
16 virtually every unsecured creditor of the type that is, sort  
17 of, within the constituency, other than the noteholders who are  
18 settled, want to be heard on a similar set of issues.

19                  THE COURT: Okay. All right. Let me do this. I will  
20 hear from you now, and then I see Mr. Mintz and -- I think it's  
21 Mr. Schiff who, if I'm not mistaken, is Citibank's counsel.  
22 And I will come back to them in a while. I see another person  
23 whose name I don't recognize, but I'll deal with that later.

24                  Mr. Bray, why don't you go ahead? And previously we  
25 had you down for about fifty minutes. You take what you need,

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1 and I, sometime ago, read through your objections and am pretty  
2 much familiar with the issues, but some time ago is like four  
3 days ago, which doesn't mean I can keep track of everything.  
4 But you have the floor.

5 MR. BRAY: Thank you, Your Honor. And just following  
6 up on your last statement, I am going to try to not wade into  
7 the heavy details, because I know we have covered them in our  
8 briefs, and I know when the dust settles here you will want to  
9 go back and read those briefs. So I'm not going to try and  
10 overload, sort of, the intake on all of these issues today. I  
11 will certainly address them, and then I will rely on the  
12 Court's re-familiarizing itself with some of the subtleties of  
13 these issues in both our objection and our surreply, which we  
14 thank you for allowing us to file, because I do think it  
15 clarified, in many respects, what are the remaining outstanding  
16 issues.

17 And just to go back and just remind the Court again,  
18 there are a number of issues that we have resolved with the  
19 debtors, and the revised plan on file deals with those. It  
20 does not deal with the issues that Mr. Karotkin covered in  
21 his -- what he read into the record last week. And those  
22 issues remain open.

23 We have not had an opportunity to fully review the  
24 plan that was filed yesterday. I'm told, on a very brief  
25 review, it didn't really substantively change much of anything.

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1 Nor have we had a chance to go through in detail the  
2 confirmation order.

3 Let me just also raise one other point. What I would  
4 propose to do, Your Honor, at the end of the hearing today, is  
5 to file with the Court a proposed list of modifications to the  
6 plan and the disclosure statement that the committee believes  
7 would resolve the committee's issues, so you will have that.  
8 You can see the actual words, take your time with it and study  
9 them, and decide if they're acceptable or not. The debtor can  
10 respond to them. You can pick and choose, but I do want to try  
11 and make this as easy for the Court as possible in terms of  
12 trying to give you language that solves our concerns. Other  
13 parties may have issues too, but in trying to come up with a  
14 solution to what are difficult issues in the process, we're  
15 hoping that that helps the process.

16 THE COURT: Okay. I do think it will help.

17 MR. BRAY: Yeah. So Your Honor, turning a little bit  
18 more now to the substance, as I said just a moment ago, you  
19 heard, in the form of objections, from virtually every type of  
20 creditor, unsecured creditor constituency in this case, that  
21 the plan is essentially fatally flawed. It violates  
22 1129(a)(1), (2), and (3) in respect of certain issues related to  
23 discharge, releases, cure and assumption, indemnity, and  
24 contribution claims.

25 The debtor has, in some sense, resolved the discharge

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1 issue by its agreement to modify 10.3. So I'm not going to  
2 spend any more time directly on that. I'm going to focus,  
3 principally, my attention on the cure and assumption issues  
4 that tie together with the indemnity and contribution issues.  
5 And then I'll spend some time on the other issues, as well,  
6 that Mr. Karotkin raised, in his statement on the record, about  
7 what we were attempting to resolve last week.

8           And first, I want to start with two statements of  
9 legal principles. The first is that, as the Court knows, that  
10 the plan purports to render us and treats us as unimpaired. We  
11 were disenfranchised and not allowed to vote, and in fact, to  
12 some extent, have been sidelined from the plan process by the  
13 debtors' position, you're unimpaired; we don't really need to  
14 deal with you. And as the Court knows, unimpaired, under the  
15 Code, 1124(1) says: "leaves unaltered the legal, equitable,  
16 and contractual rights to which such claim or interest entitles  
17 the holder of such claim or interest".

18           The second principle that I think is worth stating  
19 here is stated by the Ninth Circuit in the Frontier Properties  
20 case, 979 F.2d 1358. And I quote: "The cost of assumption is  
21 nothing short of complete mutuality and requires performance in  
22 full just as if bankruptcy had not intervened."

23           So in many respects my comments today really are teed  
24 off of those two legal principles and then some statements in  
25 the debtors' brief in respect of 502.

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1           But the primary issue that is still unresolved with  
2 the debtor is the notion that indemnity and contribution rights  
3 of a creditor, whether or not in a contract or otherwise, are  
4 no further force and effect once a plan is confirmed. That's  
5 the debtors' position. They've taken it in their brief, they  
6 have now restated it in court.

7           And I want to focus on the two aspects of that. First  
8 is the rights of parties who have contracts, executory  
9 contracts that are being assumed by the debtors. And the quote  
10 I just read from Frontier Properties is applicable to that  
11 situation. And I think it's clear and unequivocal; it means  
12 what it says.

13           And what we have in the plan is an almost Orwellian  
14 interpretation of that principle of law which is I'm going to  
15 assume the contract, but in the act of assumption, I'm going to  
16 invalidate your rights to indemnity and contribution. When I  
17 say "indemnity and contribution", I'm short-handing for those  
18 types of claims. We know what they are, and I'm not going to  
19 get into every specific example of it.

20           My point is that it's the precise opposite of what the  
21 law requires. You don't get to assume and cherry-pick or  
22 invalidate. If you assume, you take the contract as it is with  
23 the indemnity and contribution provisions riding through.

24           THE COURT: Mr. Bray?

25           MR. BRAY: When Congress --

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1                   THE COURT: Mr. Bray?

2                   MR. BRAY: Yes.

3                   THE COURT: Is there any legal difference between a  
4 contract that is a formally assumed and another one that so-  
5 called rides through because it's never been dealt with at all  
6 in the plan. Is there any difference?

7                   MR. BRAY: Your Honor, my understanding of the way the  
8 plan is drafted is there are schedules that I think -- I  
9 believe the plan says if it's not assumed it's rejected.

10                  THE COURT: Okay. Well, but the law -- well, I'm not  
11 sure that it says that, but it might. But the case law says  
12 that --

13                  MR. BRAY: Yes.

14                  THE COURT: -- a plan that is neither specifically  
15 assumed nor rejected passes through, which is not a legal term,  
16 but essentially it's the same as cure. I mean, it --

17                  MR. BRAY: I agree with that, Your Honor, especially  
18 in the context of impairment or nonimpaired. And that's why --

19                  THE COURT: Okay.

20                  MR. BRAY: -- I took a moment to read the statute  
21 because that's exactly our point is -- I'm going to shorthand  
22 the statement for you, and I'll just set it out there. As a  
23 general principle, the rights of unimpaired creditors, with  
24 very limited exceptions set forth in the Code, should be riding  
25 through this plan, unaltered, unaffected, "unimpaired". That's

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1 what the statute says, and that's what the cases concerning the  
2 statute say. In fact, as you know, they say even a positive  
3 modification in the favor of a creditor constitutes impairment  
4 that allows the creditor to vote in the plan. So I --

5 THE COURT: No, I understand. I understand. But if  
6 you just have a debtor who has one contract with somebody  
7 and -- you know, some sort of a contract, and the debtor says  
8 I'm going to assume this contract, then it rides through, and  
9 certainly that creditor is not impaired if the debtor says I'm  
10 assuming your contract. And --

11 MR. BRAY: Without exception to --

12 THE COURT: Yeah.

13 MR. BRAY: The only exception the Code allows, Your  
14 Honor -- there are two; Congress has been very clear about  
15 this, an ipso facto clause, and an anti-assignment clause. 365  
16 is very, very clear about what types of provisions are not  
17 "enforceable" by the counterparty. So --

18 THE COURT: No, but if I have a contract with you that  
19 says Montali does this and Bray does that, and it has some  
20 standard issue indemnity and contribution type language and --  
21 I'll put you in bankruptcy rather than me -- and you file  
22 bankruptcy, and you assume the contract with me, and leave  
23 aside the -- there's nothing to cure, I think the result is  
24 that you and I still have whatever mutual -- or strike  
25 "mutual" -- whatever contribution and indemnity rights that we

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1 had before bankruptcy.

2 And I think the same result would apply even if you  
3 didn't formally assume the contract, you didn't do anything,  
4 you just got your plan confirmed. I think our contract would  
5 pass through with all of those -- you know, all the warts  
6 attached, all the good things and all of the bad things, right?

7 MR. BRAY: I agree with that statement, Your Honor.

8 THE COURT: Okay.

9 MR. BRAY: And as I said -- and in this instance,  
10 again, looking at it through the prism of unimpaired assumption  
11 and indemnity and contribution and ride-through what is  
12 particularly noteworthy here is, while the debtor certainly  
13 attempts to state that, as a legal matter, we are tilting at  
14 windmills here and in fact it's the Code that is somehow giving  
15 them these rights, under 502 or otherwise, and that we're  
16 missing the mark by virtue of your decision on PPI, which is a  
17 completely different situation, there is nothing in the Code,  
18 as I pointed out, that limits our rights in the fashion that  
19 the debtor attempts to. But the debtor essentially admits as  
20 much in the plan.

21 In the plan supplement, which we mention in our  
22 surreply, Your Honor, in our opening brief, buried in 2,000  
23 pages of exhibits, is a statement that basically says that --  
24 let's see if I can find it here, Your Honor. One moment. I've  
25 got so many papers. It basically says, "except as set forth in

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1 Section 8.4 of the plan" -- and we'll get to that in a  
2 minute -- "with respect to the D&O indemnity obligations. The  
3 assumption by the debtors of all executory contracts pursuant  
4 to the plan shall result in the full release and satisfaction  
5 of all contingent pre-petition indemnification claims, and any  
6 proof of claim premised on a pre-petition contractual  
7 indemnification obligation alleged to be owned by the debtors  
8 shall be deemed disallowed and discharged except for the D&O  
9 claims." So if in fact it is true that, as a legal matter,  
10 that is what the law requires, how can the D&O's rights work?  
11 This is a classic example of cherry picking.

12 THE COURT: Well, but what if the contract that has  
13 been assumed, there are no contingencies that exist, there are  
14 no rights, there's nothing for which there needs to be  
15 indemnity. The way you just read this excerpt struck me as  
16 dealing with pre-petition things; it didn't say that those  
17 provisions disappear post-petition.

18 MR. BRAY: Well, the debtors' position is they do.  
19 That's exactly the dispute.

20 THE COURT: But do they? But why wouldn't they  
21 disappear under any --

22 MR. BRAY: They shouldn't.

23 THE COURT: I mean, look, I think -- I wonder whether  
24 you're overstating your case. We can agree that if there's a  
25 contract -- let's go back to the Bray-Montali contract.

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1                   MR. BRAY: Um-hum.

2                   THE COURT: And you want to assume the contract with  
3 me, and I believe that you owe me 1,000 dollars.

4                   MR. BRAY: Right.

5                   THE COURT: Not for a cure of a traditional default-  
6 like lease, but because --

7                   MR. BRAY: Right.

8                   THE COURT: -- because you should be indemnifying me  
9 because something that happened pre-petition that made me incur  
10 a 1,000-dollar expense that I think you should indemnify me  
11 for. But you assume the contract, and I don't do anything, I  
12 don't assert a claim for 1,000 dollars. I think the answer is  
13 I'm out of luck because there existed a right, whether it's  
14 contingent or -- well, a right that you could know about it.  
15 It's within fair contemplation, to use a traditional Ninth  
16 Circuit 365 term.

17                  And I think I should be out of luck on that one, but  
18 the next day after confirmation, if you do something that  
19 triggers another kind of indemnity, I think I have a right to  
20 assert it against you. And I don't hear -- I mean, I doubt  
21 that the debtor would disagree with that, so --

22                  MR. BRAY: Your Honor, let me see if I can break that  
23 down. The cure simply means the debtor has the right to assume  
24 the contract. It doesn't operate as discharge. There's no law  
25 I'm aware of, no case that says that the active cure discharges

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1 claims. In fact, the Ninth Circuit has said the opposite, that  
2 all the active cure does is it is a predicate to the act of  
3 assumption, nothing more. There's nothing in 365 that says it  
4 constitutes a discharge or anything else. It just simply says  
5 this is what you had to pay to assume the contract. Once it's  
6 assumed, all of its obligations remain in full force and  
7 effect.

8 THE COURT: I know, but again --

9 MR. BRAY: That's what the Ninth Circuit is saying.

10 THE COURT: -- you seem to agree that if we had an  
11 identifiable monetary cure so that you're my tenant and I'm the  
12 landlord, and you own me 1,000 dollars in back rent, and you  
13 move to assume the lease, and you say there are no defaults,  
14 and I fail to say, yes, there is, there's a 1,000-dollar  
15 default, I think it's pretty clear, if the Court approves that  
16 assumption, you don't have to pay me the 1,000 dollars. Don't  
17 you agree with that?

18 MR. BRAY: No, actually, Your Honor, I would  
19 slightly -- let me put it this way. I can't state that you  
20 couldn't assume the contract. You cured what was stated that  
21 had to be cured to assume the contract. So the act of  
22 assumption occurred. I would not agree that the claim was  
23 discharged.

24 THE COURT: But okay, maybe it's not discharged as a  
25 matter of bankruptcy law, but you, the debtor, say I don't owe

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1 Montali any back rent. Montali is asleep at the switch and  
2 does not assert 1,000 dollars of back rent, and the contract's  
3 assumed. I think the case laws are clear that I can't then  
4 come back after you later and say, hey, Bray, you own me 1,000  
5 bucks. Your answer would be I cured that lease and assumed it.

6 Now, let's change the facts. Mr. Karotkin --

7 MR. BRAY: Your Honor, I would say you cured that  
8 obligation.

9 THE COURT: Okay.

10 MR. BRAY: You didn't cure any other obligation in the  
11 contract, and that's an important distinction.

12 THE COURT: But if I --

13 MR. BRAY: Property rights are a bundle of rights.  
14 Yes, you cured the obligation to pay rent by tendering me the  
15 1,000 dollars, and I accepted it. That payment of that  
16 obligation is satisfied. It doesn't satisfy any other  
17 obligation in the contract.

18 THE COURT: No, you're twisting my hypothetical. In  
19 my hypothetical, you owe me 1,000 dollars.

20 MR. BRAY: Oh, I'm sorry. Okay, sorry.

21 THE COURT: And I fail to assert the claim for 1,000.  
22 Bray files the motion and says I want to assume the contract  
23 with Montali, there are no defaults. Montali doesn't do  
24 anything, but has notice, and doesn't come in and say, wait a  
25 minute, Bray, you owe me 1,000 dollars. If I don't say it, I

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1 think I'm out of luck. And whether it's legally discharged or  
2 contractually discharged is probably angels on a pin. But now  
3 let's change the facts.

4 Mr. Karotkin has a damage claim because of something  
5 you caused, but he has a right to assert it against me. So he  
6 hits me up for the 1,000 dollars, and I know that he's out  
7 there, and I don't assert my indemnity or contribution claim  
8 against you because it's a pre-existing default. Hey, Bray,  
9 you should have paid Karotkin his money. He got me instead. I  
10 have a right of indemnity. To me, if you assume the contract,  
11 and I don't assert that claim, I've left it on the table and  
12 you win. That's my take. Again, you can disagree with that.

13 MR. BRAY: In your hypothetical, the 1,000 dollars was  
14 due and owing under the indemnity clause at the time it was  
15 assumed; is that correct?

16 THE COURT: Mr. Karotkin did something that he was  
17 owed money by you, but he had a right to assert it against me  
18 too. Maybe I'm the guarantor. Let's say, you know, I said to  
19 Karotkin, don't worry, Bray is good for it, he'll pay the bill.  
20 So Bray goes into bankruptcy, Karotkin says, hey, Montali, Bray  
21 just stiffed me for 1,000 dollars; make good on your guarantee.  
22 So I have a contribution or indemnity claim against you if I am  
23 forced to pay Mr. Karotkin. But I don't do it. I'm asleep at  
24 the switch. I don't assert an indemnity claim that I could  
25 have asserted and that I had knowledge of.

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1                   And to me, whether it's an 1141 discharge, or a 365  
2 discharge, or a state law discharge, that's for the scholars of  
3 the academics. For my take, if I have notice of Mr. Bray, you  
4 owe me back rent, Mr. Bray, you owe me because you made me  
5 incur guarantor obligation to Mr. Karotkin, I have the right to  
6 assert both of those against you. If I don't do it, and you  
7 assume the contract, you win, I lose. I think that's all we're  
8 talking about here.

9                   Now, Mr. Karotkin, if he likes my reasoning, he's  
10 going to say that's a brilliant analysis, and if he doesn't  
11 like my analysis, he'll say so. But I don't think, to take the  
12 hypothetical one step further, if the plan's confirmed on a  
13 Monday, and on Tuesday you breached the lease, or Mr. Karotkin  
14 causes -- he has a claim that he can assert against me as the  
15 guarantor, I can assert an indemnity claim against you, post-  
16 petition, and there's no discharge, there's no bankruptcy  
17 relief available; you are on the hook.

18                  And I think that's what's happening here. And I don't  
19 know what to say about the D&O issue, but if you represent  
20 thousands of general creditors that want to have indemnity and  
21 contribution obligations passed through, then your constituents  
22 should be asserting them in response to the assumption motion  
23 if they pre-existed the bankruptcy. And if they didn't exist  
24 in the first place, you're not at risk.

25                  Anyway, I'm making the argument. I should let you

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1 make it.

2 MR. BRAY: Your Honor, a couple of observations. One,  
3 there is no assumption motion. The debtor is relying on the  
4 general bar date to play gotcha here.

5 THE COURT: But --

6 MR. BRAY: So that's a significant distinction.

7 THE COURT: Oh, that's not true. The request to  
8 confirm the plan is the motion.

9 MR. BRAY: Well, but there's no formal time period in  
10 there to actually say you need to assert the -- well, let me  
11 move on.

12 THE COURT: Yes, there is; it's called deadline for  
13 objection.

14 MR. BRAY: I understand.

15 THE COURT: Right?

16 MR. BRAY: I understand. My other point is, Your  
17 Honor, I'm not sure I agree, at the end of the day, that there  
18 is nothing in Section 365, and there's no case that the debtor  
19 has cited, at least, that would support the notion that cure is  
20 effectively the equivalent of discharge. Again, I don't want  
21 to repeat myself, but I maintain that the act of cure only  
22 allows the assumption of the contract, nothing more.

23 THE COURT: I'm just going to --

24 MR. BRAY: The contract rides through, as per the  
25 Ninth Circuit's statement that it requires performance in full.

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1                   THE COURT: I'm just going to quarrel with you one  
2 more second. I don't think this is a cure issue; I think it's  
3 a nonassertion of a right issue. And there's nothing -- if I  
4 don't assert the indemnity entitlement, then that, to me, is  
5 legally no different from failing to assert a cure amount that  
6 I could have asserted. Anyway, let's move on.

7                   MR. BRAY: All right. Your Honor, I do think there's  
8 a difference, but let's move on. I agree.

9                   Your Honor, the other point I was going to make was,  
10 interestingly -- and this goes to your point -- in Section 8.4  
11 of the plan -- let me see if I can grab that, if I may,  
12 quickly. I guess maybe this addresses your issue as well,  
13 leaving your hypothetical.

14                  The plan says -- and I'm going to use the D's and O's  
15 again as my sounding board -- that there's always -- as you  
16 know, there's always this hypothetical legal issue about what  
17 are the rights D's and O's really have when they ride through.  
18 How do we frame their rights, in a legal fashion, to justify  
19 the complete ride-through of their rights?

20                  And you'll see in the plan, here's how the debtors are  
21 in Section 8.4. They said that, essentially, that the rights  
22 of the D's -- that the corporate documents, whatever rights  
23 under anything, under any written agreements, or anything at  
24 all that the D's and O's have with respect to indemnification,  
25 are deemed to be executory contracts, and as a result of

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1 that -- and I'm going to quote, "shall remain in full force and  
2 effect to the maximum extent permitted by applicable law, and  
3 shall not be discharged, impaired, or otherwise affected by  
4 this plan. All such obligations shall be deemed and treated as  
5 executory contracts that are assumed by the debtors under this  
6 plan and shall continue as obligations of the reorganized  
7 debtor. Any claim, based on the debtors' obligations in this  
8 section, including indemnities, shall not be a disputed claim  
9 or subject to any objection, in either case, by reason of  
10 502(e)(1)(B) or otherwise."

11 So I think the debtors' own plan disagrees with,  
12 essentially, the hypothetical you've presented me before, Your  
13 Honor. They've taken the exact opposite position as to what  
14 the consequence of assumption or being an executor or having  
15 the rights of a party whose executory contract is assumed, what  
16 that means.

17 THE COURT: Why is it unfair or inappropriate for a  
18 trade creditor to be treated with the traditional principles of  
19 if a solvent debtor says, I'm going to cover any liability that  
20 officers and directors have? How does it hurt another -- a  
21 trade creditor or anybody else in a solvent case?

22 MR. BRAY: It doesn't hurt them. It just is simply a  
23 statement of the debtor's interpretation of what it means to  
24 have an executory contract.

25 THE COURT: Okay.

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1                   MR. BRAY: That's my point. If they had just said,  
2 because I want it to be so, this is what I'm going to do, then  
3 that would be one thing --

4                   THE COURT: But what --

5                   MR. BRAY: -- but that's not what they said. They  
6 said it's an -- they have a right to the holder of an executory  
7 contract. And what flows from that is what I read.

8                   THE COURT: Okay.

9                   MR. BRAY: And by the way, I'm going to go back again  
10 to where I started, which was that 1124 says, unimpaired. So I  
11 also want to layer that on top of your hypothetical -- why is  
12 this a different situation? Because they were unimpaired. If  
13 you marry those principles up, I think it means we ride it  
14 through.

15                  THE COURT: Okay.

16                  MR. BRAY: So Your Honor, I think -- a related issue,  
17 which touches on the rights of non-upholders of -- nonexecutory  
18 contract rights of unsecured creditors in this situation. And  
19 there, I think I'm probably more in sync with some of the  
20 thoughts here. In this case, the debtors, by virtue of the  
21 plan supplement and in their confirmation brief took the  
22 position that those rights are extinguished -- well, those  
23 rights being indemnity contribution -- are extinguished as a  
24 matter of law under 502(e)(1)(B). No mention of 502(e)(2).  
25 They basically just said they're gone, obliterated, and --

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1 whereas the debtor says, we're misinterpreting what statutory  
2 impaired versus nonstatutory impairment -- it's actually quite  
3 the opposite. Their brief takes the position that we have no  
4 rights under 502(e) (2), which mandates that once the claim is  
5 liquidated, it shall be allowed in the respect to the indemnity  
6 contribution. The statute says "shall". It's a mandatory  
7 allowance issue subject to the normal types of issues. But  
8 it --

9 THE COURT: Okay, let's go back to my hypothetical  
10 with you and Mr. Karotkin and me. Mr. Karotkin has -- he  
11 contends that you owe him money, but he also contends that I'm  
12 going to have to pay him money because I have indemnified or  
13 guaranteed your debt. So you file bankruptcy and I file a  
14 claim for my guarantor claim against you, but I haven't paid  
15 Mr. Karotkin yet.

16 I believe under the law, my claim would be disallowed  
17 because I haven't paid him yet. But if some day in the future,  
18 I am forced to pay him, then I believe 502(e) (2) kicks in and I  
19 get -- the contingency of my claim against you has matured. I  
20 know have to pay -- because I'm now -- I'm obligated to pay, I  
21 have a right against you.

22 So that to me is the way the statute works. He should  
23 have filed a claim -- or I could have filed a claim on his  
24 behalf. And I can't -- particularly in an insolvent case, I  
25 can't file a claim on my behalf and compete with him. That's

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1 the principle of 502(e), right?

2 MR. BRAY: Yes. And I'm going to seize on a word you  
3 said. Couple points. One, we're not talking about a  
4 contractual assumption issue. We're just talking about general  
5 rights. And two, the insolvency point you made -- 502, this  
6 legislative (indiscernible) very clearly states it's designed  
7 to essentially not have competing recoveries for the same  
8 claim -- the same claim -- with the insolvent debtor under the  
9 principle of equality of distribution.

10 Well, first, the focus of the concern here -- again, a  
11 little background -- we're -- the genesis of this issue arises  
12 in respect to the debtor's assignments of their litigation  
13 claims against the vendors, the tree trimmers, the people that  
14 they're relying on to keep them compliant with their  
15 obligations under 1054. It's those people whose claims are  
16 being assigned into this fire victim trust, essentially being  
17 thrown to the wolves.

18 So the issue -- and those claims and what we will have  
19 is essentially those potential defendants having two claims  
20 come up here: one from the victims themselves and then  
21 whatever rights the debtors had.

22 Now in respect to the victims themselves, when they --  
23 that's a completely separate basis for recovery, unless the TCC  
24 is going to say otherwise, which I highly doubt. So 502 is  
25 isn't implicated there because it's not a double recovery on

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1 the same claim. It's a separate basis of why they're billing.

2 So to the extent under applicable state law -- we  
3 don't need to debate whether it's there or not; we're not  
4 pressing that issue now -- if it exists, 502 isn't even  
5 implicated because it's a separate basis of liability. So --  
6 and I'll get to your point about the proof of claim in a  
7 second -- but essentially -- and we don't need to resolve the  
8 issue completely because we acknowledge, as we did when we  
9 talked to the Court about this in the settlement, that a  
10 reservation of rights with respect to 502 may be appropriate,  
11 that the Court may not want to get into every permutation of  
12 that issue. I'm merely pointing out that it is not at all  
13 clear that it applies, and especially since we don't -- we have  
14 a solvent and not an insolvent debtor -- this concern about  
15 diluting other creditor's recoveries by essentially a double  
16 payment on the same claim -- just simply isn't implicated here.

17 So I take it a step further. Maybe there's an  
18 argument that's applicable, but actually, if you step back and  
19 think about it, 502 really isn't applicable here. So the  
20 attempt by the debtor to essentially use a statute which is --  
21 it's debatable if it has any applicability, but excise the  
22 rights under 502(e)(2) from the creditor, that is impairment.  
23 That is the classic -- that's the worst kind of impairment you  
24 can. You're basically depriving this group of creditors of  
25 their statutory rights, and again, I know -- just to complicate

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1 it a little further, I'm going to again layer on top of this  
2 1124. Statute says they have to be unimpaired. That's the  
3 guiding principle for having disenfranchised this group of  
4 creditors is you cannot -- I won't read the statute again. We  
5 know what it says. That principle of law has to be respected  
6 with respect to every interpretation of the rights of the  
7 parties under the circumstances. And that's the point I can't  
8 stress enough.

9                   And Your Honor, I said this early on, but again, I  
10 want to circle back to -- you know, essentially every creditor  
11 class who holds an executory contract -- BPAs, the government  
12 parties -- everyone has raised the same issue. It is a chorus  
13 of voices. This is not a -- I don't think in terms of the  
14 executory contract -- I'm not -- I mean, as I look at it, it's  
15 not even close. This is a open and shut issue. I'm not  
16 intending to any fashion -- I just -- I think from the creditor  
17 body, given the chorus of voices on this issue, that that -- it  
18 makes the issue all the more interesting that it really is  
19 subject to debate. I take the Court's comments for what they  
20 are. I respect those. I just want to set the stage for you  
21 that this is not, from the creditor's perspective, a nominal  
22 principle of law in terms of riding through, in terms of these  
23 rights.

24                   I said enough about that. I want to turn to a couple  
25 of other issues, if I may.

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1                   THE COURT: One more question. What's the fix?

2                   MR. BRAY: Sure.

3                   THE COURT: The committee hasn't asked me to deny  
4 confirmation, so what's the fix if I agree with you?

5                   MR. BRAY: I will -- we will submit to you at the end  
6 of today, proposed language that fixes this issue and our other  
7 issues. And they will be relatively short. They can be added  
8 to both the plan and the confirmation order and, at least we  
9 believe, will resolve the issue.

10                  THE COURT: Okay.

11                  MR. BRAY: Okay?

12                  THE COURT: I'll look forward to something then.

13                  MR. BRAY: Yeah. And we would -- I have a draft of  
14 it. I just want to read it. I want to make sure we like it,  
15 and then we'll file it.

16                  THE COURT: Okay.

17                  MR. BRAY: So Your Honor, we talked about,  
18 essentially, contribution of debtors (Indiscernible). The --  
19 there were some other issues -- and these came up with Mr.  
20 Karotkin -- that one of the issues was an acknowledgment  
21 regarding retained rights and defenses of these entities who  
22 are being thrown to the wolves in the fire victims' trust with  
23 respect to the idea that whatever rights and defenses they  
24 have -- right -- or go along with the claims that are being  
25 assigned. Now, I don't really think that's a controversial

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1 issue of law. I think the Court stated as much when we spoke  
2 about this the other day, and in fact, I won't -- in debtor's  
3 briefs, page 63 and 68 of the file copies -- I won't pull them  
4 out now -- they basically say that that's right, that they're  
5 not attempting to basically strip them of those rights. The  
6 debtor's argument is with respect to indemnity and contribution  
7 back against the debtors, not with respect to the rights and  
8 defenses that would flow with the assignment of the claims. So  
9 we're also going to submit language on that.

10 THE COURT: You're familiar with the decision I issued  
11 on the trust challenge by the major corporate claimants, right?

12 MR. BRAY: Some.

13 THE COURT: Well, okay. I mean, the big issues had to  
14 do with access to a Court and the subrogation offset issue.

15 MR. BRAY: Right.

16 THE COURT: But I thought I identified as something  
17 that I thought was a -- could be clarified in the drafting is  
18 something that Ms. Winthrop and Mr. Mintz and the other counsel  
19 representing the major corporate fire victims in the TCC of the  
20 trust, and I haven't heard back on that. I thought that was  
21 going to -- was getting resolved, but it seems like it's the  
22 same issue here. You can't have set off -- I'm sorry, set off  
23 in a counterclaim.

24 MR. BRAY: Recruitment.

25 THE COURT: Issues divided it up going both ways. It

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1 could either be one of the other, and I thought that was  
2 clarified. But we'll see what other people said later on.

3 MR. BRAY: Agreed, Your Honor, and again, we're  
4 talking about rights and defenses. So I offered essentially  
5 the idea that they all flow together and there's mutuality  
6 there. It's not a one-way proposition. Everyone's rights on  
7 those issues are essentially reserved and preserved. We'll  
8 also submit language on that.

9 I don't think that is a -- as I understand it -- even  
10 the debtor's own confirmation brief -- I don't really think  
11 that that's a proposition that is challenged, but it does bring  
12 to mind an issue with respect -- since you raised it -- the  
13 fire victim's trust. We do have a concern, and I thought this  
14 was really in the nature of a clarification, but apparently  
15 not -- these indemnification contribution rights that we spent  
16 a fair amount of time discussing, there is an interpretation  
17 that to the extent that those are allowable claims, for lack of  
18 a better word to say it, against the debtors for indemnity  
19 contribution, that those obligations to pay by the debtors are  
20 channeled to the fire victims' trust such that the fire victims  
21 themselves, their recovery will be diluted by the debtor's  
22 obligation, either statutorily or by contract, to pay the  
23 contractual counterparty or the vendor under a right of  
24 indemnity.

25 I didn't think that that was the intention, first off,

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1 because the debtor's first said no such claims can be allowed,  
2 and second, the vendors and the unsecured creditors are not the  
3 fire victims here, so trying to have the fire victims -- have  
4 them recover from a trust intended for the fire victims seems  
5 to me to be unusual, but that is an interpretation, and when  
6 we've asked for clarification on that, we've been met with a  
7 resounding silence.

8                   THE COURT: I thought that was already clarified, and  
9 maybe at some point, but not in this segment, Mr. Karotkin can  
10 clarify the issue. But I don't want him to do it now because I  
11 need to let you complete your argument and --

12                   MR. BRAY: I understand, Your Honor.

13                   THE COURT: -- other people that want to object. But  
14 to me, that's in the probably a nonissue category. But I could  
15 be wrong.

16                   MR. BRAY: I hope you're right. That's all I'll say.

17                   THE COURT: It would be an interesting disposition of  
18 the trust if the debtor got to channel the trust and then  
19 drained it all out again.

20                   MR. BRAY: Um.

21                   THE COURT: I don't think that's going to happen.

22                   MR. BRAY: Paying the vendors -- I'm just not sure  
23 that that -- that's an interesting interpretation. That's all  
24 I'll say.

25                   So Your Honor, I think that that covers the issues we

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1 raised. I do want to say several more things about the  
2 arguments you're about to hear, and I want to lend some support  
3 to the arguments of the state and others challenging the  
4 provisions of Section 8.2(e). We looked at that as well, and  
5 let's just say that while we think that our proposed fixes to  
6 the plan solve the problem, it is -- as drafted -- and has the  
7 potential to create mischief and ambiguity, and we just don't  
8 see why that type of a provision should stand as drafted.  
9 There have been several recommended fixes to you from the other  
10 parties in terms of clarifying how that provision should work.  
11 We would be supportive of that or we would either be supportive  
12 of just simply striking the provision.

13           If you look at the input, it's sort of an  
14 unnecessarily cumbersome attempt to restate what the rights are  
15 as a matter of law, and I think that as a matter of law, the  
16 parties' rights are otherwise reserved and preserved. As I  
17 said, it just creates mischief.

18           Similarly, the -- there was a concern expressed about  
19 the Court not having -- or about the debtor's being able to  
20 make modifications to the plan without an order of the Court.  
21 We also share that concern that there not be any substantive  
22 modifications to the plan whatsoever. The Court should have to  
23 approve those changes, especially given the amount of  
24 litigation that has occurred in respect of the terms of this  
25 plan itself.

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1                  Then, Your Honor, lastly -- believe it was the  
2 municipalities filed an objection. It's a proposed language  
3 with respect to Section 10.13. In one of your text orders, you  
4 asked why shouldn't I adopt this provision, especially with  
5 respect to the GUCs?

6                  And some of the language addressed not just the GUCs,  
7 but the -- or not just the municipalities, but the GUCs. I  
8 think there's some merit to that. It cuts through --

9                  THE COURT: Mr. Karotkin, frankly, had a heart attack  
10 when he read it at the remarks.

11                MR. BRAY: What it does is -- I'll tell you  
12 (indiscernible) --

13                MR. KAROTKIN: Your Honor, I thought we had resolved  
14 this with Mr. Bray. I don't know why he could raise that issue  
15 now.

16                THE COURT: Yeah, I thought it was --

17                MR. KAROTKIN: I'm actually quite -- I'm actually  
18 astonished that he would go before the Court today and raise an  
19 issue that he said was resolved.

20                THE COURT: Come on. Let's take it easy.

21                MR. BRAY: Well, wait it out. I settled --

22                THE COURT: Mr. Bray --

23                MR. BRAY: Your Honor. I'm perfectly happy to live by  
24 our settlement offer. I'm not the one -- I'm mystified by  
25 this.

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1                   THE COURT: But take a look at that.

2                   MR. BRAY: I live by the settlement.

3                   THE COURT: Take a look at the -- last night's version  
4 of 10.13.

5                   MR. BRAY: I haven't seen it yet, Your Honor.

6                   THE COURT: Yeah. I haven't. So, okay. Let's --  
7 that's it for you? Mr. Bray, we cover all your --

8                   MR. BRAY: Yeah, yeah. Your Honor, just to be clear  
9 about this. Other than what I said about the fire victim's  
10 trust, I don't think I said anything inconsistent with what we  
11 said to the Court in terms of the settlement last week. I --  
12 as a matter of fact, if it becomes an issue, I would urge you  
13 to go back and read the transcript on this issue, and then you  
14 could decide if anything I have said is inconsistent with the  
15 settlement that we talked about.

16                  THE COURT: I got lots of things to do, but going back  
17 and (break in audio) --

18                  MR. BRAY: I understand.

19                  THE COURT: -- is not my first choice of things to do.

20                  MR. BRAY: That's why -- I didn't want to go there.  
21 You've got a lot to do, and I -- you know, it didn't work and  
22 it did work. But I think I'm getting sort of somewhat unfairly  
23 categorized as having said something that really doesn't -- it  
24 was outside the scope of what we discussed. I'm happy to live  
25 with that subject to the clarification in respect of the fire

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1 victims' trust.

2 THE COURT: Okay. Mr. Bray. Thank you for your  
3 thorough argument. I appreciate the colloquy.

4 I'm going to move you out of the room now, if you  
5 don't take it personally. And --

6 MR. BRAY: No, Your Honor, not at all.

7 THE COURT: -- I'm going to ask my clerk to bring Mr.  
8 Mintz and Mr. Glassman in, and Mr. Schiff, if you're hearing  
9 me, you should raise your hand because you had asked -- yeah.  
10 Well, yeah. And bring Mr. Schiff in. Ms. Winthrop -- yeah,  
11 bring Ms. Winthrop in too. We'll get everybody. We're going  
12 to start with Mr. Schiff when he comes in here.

13 Okay, for each of you coming on to the panel -- Mr.  
14 Glassman, Mr. Mintz, Ms. Winthrop, Mr. Schiff -- just remind  
15 you to state your name for the record.

16 Let's start with Mr. Schiff, and then we'll go Mr.  
17 Mintz, Mr. Glassman, and then Ms. Winthrop in that order.

18 Mr. Schiff?

19 MR. SCHIFF: Okay. Thank you, Your Honor. Can you  
20 hear me, Your Honor?

21 THE COURT: Yes. I can.

22 MR. SCHIFF: Great. Thank you. David Schiff of Davis  
23 Polk and Wardwell on behalf of Citi. Thank you very much again  
24 for allowing us to speak briefly on this issue here.

25 Citi, Your Honor, is the administrative agent under

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1 the utility revolving credit agreement. We filed a reservation  
2 of rights, not an objection, in connection with the plan, which  
3 was docketed at UCF 2360 (phonetic). We had asked to address  
4 the Court on this issue last week after Your Honor raised the  
5 specter of argument on this particular point because the  
6 debtors had included numerous agreements with Citi and its  
7 affiliates on the schedule of listed agreements and one of  
8 those agreements was the utility revolving credit agreement.

9           With respect to the credit agreement, we were  
10 concerned that given the breadth of paragraph 13 in the  
11 schedule of listed agreements that the language would be so  
12 broad as to conflict with language that was specifically  
13 negotiated in the plan of provisions for the protection of the  
14 funded debt trustees. We raised that with the debtors, Your  
15 Honor, and in response, the debtors, Friday night, filed an  
16 amendment to the assumed agreement schedule that removed that  
17 credit agreement as a proposed assumed contract, and we do not  
18 object to that modification, so to the extent that that's not  
19 changed further -- and I don't expect that it will be -- but to  
20 the extent that that's not changed further, it should resolve  
21 our issues with regard to the credit agreement.

22           I would mention, Your Honor, though that, again, we do  
23 have several other contracts that are still on the schedule of  
24 assumed agreements with the debtors, and I think that I thought  
25 that Mr. Bray stated the issues very well, and I don't intend

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1 to rehash, but if you permit, I would just make a few brief  
2 points.

3 First, Your Honor, with respect to Section 502(e),  
4 which I understand I read from the confirmation brief and I  
5 think, as Mr. Bray said in his sur-reply the debtors are  
6 relying on as justification for the discharge of contingent  
7 indemnification plans. We just note that 502(e) by its terms  
8 is limited and the debtors say this -- the instances in which  
9 the claimant is co-liable with the debtors -- and I would note  
10 that customary indemnities in financial contracts in particular  
11 often go beyond that. They cover defense costs. They cover  
12 other matters for which there is no finding of liability. And  
13 so I think the reliance on Section 502(e) as a basis to  
14 discharge all contingent indemnification plans pre-petition is  
15 misplaced.

16 THE COURT: Did you hear my discussion with Mr. Bray  
17 about my hypothetical? My contingent claim of the money that I  
18 have to pay Mr. Karotkin and don't I have a mature claim  
19 against Mr. Bray?

20 MR. SCHIFF: No, but thank you, Your Honor. That was  
21 actually was the next point that I was hoping to visit. I  
22 thought that that example was helpful, in particular, because I  
23 think in your example, you had notice, as the creditors, the  
24 contract counterparty -- you had actually had notice that some  
25 event had occurred pre-petition or prior to confirmation --

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1 prior to the cutoff of the indemnity that would have given rise  
2 and would have presumably given you the ability as part of a  
3 cure process to raise it. And that, I think, is an important  
4 point, maybe just of clarification, because as I read that  
5 paragraph 13 and as I read the plan, the debtors are actually  
6 saying it doesn't matter if you as the claimant -- as the  
7 counterparty that would potentially seek to exercise the  
8 indemnity -- it doesn't matter if you had knowledge or could  
9 have had knowledge that there was some lurking liability pre-  
10 petition. It's just if your indemnity looks back to periods  
11 pre-petition or maybe it's pre-confirmation -- but if your  
12 indemnity looks back to before the time when the debtors are  
13 seeking to cut off that right, then regardless of whether you  
14 had notice, if you could have known, if you could have raised  
15 it as part of the cure, because that sort of theoretically's  
16 the case, that right is cut off.

17           And I guess the concern would be, to modify your  
18 hypothetical, Your Honor, that, you know, let's say the plan is  
19 confirmed at the end of this month, and next month, someone  
20 goes to my client and says, something happened in 2017 and I  
21 would go after PG&E for this, but they're in bankruptcy and  
22 their plan was just confirmed, so here I am and I'm going to  
23 assert this claim against you. And I would look then to -- my  
24 client would look to its indemnity -- if it has a contractual  
25 indemnity that looks back to that period -- under the terms of

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1 the agreement, it would first be getting notice of this issue  
2 in July 2020 and would be able to go back and look to the  
3 indemnity of the agreement at that point.

4 As I understand what the debtors are saying, what the  
5 debtors have proposed in the plan, there would be no lookback  
6 to essentially pre-petition conduct or pre-petition events  
7 whatsoever. That's how I understand the plan to be cabineting  
8 the time period that indemnification rights cover, is they have  
9 a cut off -- if it's pre-assumption, that right is just read  
10 out of the agreement. And the issue, Your Honor, is if you  
11 say, well, you have your cure process and you could make a cure  
12 objection, then that's your window of time to raise the issue,  
13 I'm just not sure how practically you could do that without  
14 having notice that this liability is lurking. And you could  
15 have a situation where frankly the debtors have notice that the  
16 liability's lurking, but the parties who's ultimately sued  
17 who's party to an assumed contract with the debtors doesn't  
18 have notice. And that's the issue I'm looking at.

19 THE COURT: Okay. Well, would you restate the same  
20 thing -- in your opening moment or two, you referenced  
21 paragraph 13, but I didn't get paragraph 13 of what.

22 MR. SCHIFF: Apologies, Your Honor. Paragraph 13 of  
23 the schedule of the schedule of assumed contracts. The other  
24 indemnification obligations provision.

25 THE COURT: So in the supplement, right?

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1 MR. SCHIFF: In the supplement, yes. Yes.

2 THE COURT: Okay. All right. I got it. Thank you,  
3 Mr. Schiff. Appreciate your comments. We're going to take you  
4 out of the panel now. We don't need to keep you here.

5 MR. SCHIFF: Thank you, Your Honor.

6 THE COURT: I'm going to go -- Mr. Mintz, I think you  
7 had a hand up first.

8 MR. MINTZ: Thank you, Your Honor. Benjamin Mintz  
9 from Arnold & Porter, counsel for AT&T. I put my hand up in  
10 response to the agenda that Mr. Karotkin outlined. I'm not --  
11 my issues, as I've alluded on a couple of the prior hearing  
12 dates relate to the trust documents, and as I've previewed with  
13 Your Honor, we've been working on trying to resolve those  
14 issues with the TCC and the trust -- and the trustee. We've  
15 taken it as far as we can and we have two issues that we need  
16 to bring to Your Honor's attention and have Your Honor  
17 determine. I know I'm kind of jumping in the middle of this  
18 other argument and I don't necessarily want to do it now, but I  
19 wanted to make sure with the opportunity to present those  
20 issues to Your Honor, and we can defer that to a later point in  
21 the agenda. I probably need about five to ten minutes to  
22 explain and describe the issues to Your Honor and argue the  
23 point.

24 THE COURT: Okay. Well, the agenda is very fluid  
25 because we --

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1                   MR. MINTZ: I understand.

2                   THE COURT: -- it changes every five minutes. Let's  
3 defer it.

4                   Ms. Winthrop, are you -- essentially, take your --  
5 unmute and state your name.

6                   MS. WINTHROP: Rebecca Winthrop on behalf of the  
7 Adventist Health claimants and we are on to echo Mr. Mintz'  
8 request.

9                   THE COURT: But it's the same -- you're -- I mean,  
10 obviously, you're coming from the same point about that.

11 Well --

12                  MS. WINTHROP: Yes, Your Honor.

13                  THE COURT: -- well, it seems to me that I need to  
14 involve the counsel for the TCC and for the trustee on this, so  
15 I don't even know if -- I know Mr. Julian, of course, was with  
16 us for now. I didn't -- I'm going to defer it. I just don't  
17 know when we're going to defer it so. Why don't I urge you to  
18 be in touch with both those counsel if you can and maybe we can  
19 figure out a time to deal with it. I don't know whether -- I  
20 mean, I really am trying to avoid setting yet another hearing.  
21 On the other hand, I can only take so many written briefs,  
22 so --

23                  MR. MINTZ: Your Honor, we were prepared to do it on  
24 arguments. We're certainly happy to submit a writing if it  
25 would be helpful to Your Honor, but the issues are fairly

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1 discrete, and we believe we could explain them to Your Honor in  
2 a brief presentation.

3 But again, we're certainly happy to do it in writing  
4 if that's Your Honor's --

5 THE COURT: Okay. Let's do this. You two have been  
6 very active. Your fellow counsel who participated in the  
7 motion, you know, three weeks -- or sharing the podium with  
8 you -- but you two have been more active recently. Why don't  
9 you just file something later today if possible and make -- and  
10 indicate -- well, I'll tell you what. Go one step further.  
11 Are you comfortable communicating with TCC and trustee's  
12 counsel to sharpen the point so you could just have a joint  
13 statement of what the issues are and then perhaps I could  
14 prepare a little bit ahead of time and either set a separate  
15 hearing later or not on -- just do something, but I need to get  
16 focused on the issues. So (indiscernible) --

17 MR. MINTZ: Your Honor, we've been in regular touch  
18 with the trustee and the TCC. We spoke with them about an hour  
19 before the hearing. We certainly could undertake that effort.  
20 We could also have them file the trust documents as they  
21 currently stand and highlight the provisions at issue because  
22 there have been other changes to the trust documents and it  
23 would probably be appropriate to put everything in context  
24 before --

25 THE COURT: Well, it's appropriate, but it just adds

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1 to my total overwhelming load of trying to read things, and so  
2 if I get a hundred-page document and I have to read it to get  
3 two paragraphs of what the issue are, it's just more difficult.

4 It's not that --

5 MR. MINTZ: I understand. We can frame this in a page  
6 or two as to what the issues are.

7 THE COURT: Yeah. See if you can both do that. If  
8 you can't do it, I'll figure out a way to come back to it. In  
9 terms of where we're going from, in the bigger picture, I've  
10 been working with my staff, and we're trying to put together a  
11 written document that identifies the open issues that need me  
12 to decide and perhaps just on another page identify the issues  
13 that have been resolved so that, for example, when I go back to  
14 the ruling that I made on the motion where you two were so  
15 active, we -- I clearly made a decision on some and I left some  
16 open. So it's helpful to go back to, okay, what's open, what  
17 are they going to -- what have they resolved on their own.  
18 It's not that I don't care. It's just that I can't absorb it  
19 all. So why don't you do that? Let's see if you can put  
20 together a brief statement that, I guess, the trustee's  
21 counsel's the principal party here, but to the extent that the  
22 TCC's counsel's involved, fine too.

23 Do what you can. If it needs to get more fully dealt  
24 with on the documents, I'm certainly not going to refuse the  
25 offer.

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1                   MR. MINTZ: No, I think we'll be able to do that, Your  
2 Honor.

3                   THE COURT: Okay. Okay.

4                   Ms. Winthrop? That's okay? All right. Thank you  
5 both. I'm going to, again, move you both out for now.  
6 Appreciate your effort.

7                   MS. WINTHROP: Thank Your Honor.

8                   THE COURT: Mr. Glassman, I thought -- well, okay.  
9 You tell me why you're back here today.

10                  MR. GLASSMAN: Your Honor, it's on the 8.2(e) and  
11 other issues that are of interest to the municipal objectors,  
12 and we haven't spoken on that yet, so if this is the time -- if  
13 you have other issues you want to deal with first, I'll wait,  
14 but that's the reason. It's to address the issues.

15                  THE COURT: Well, I don't see a hand raised at least  
16 by anyone like Mr. Pascuzzi or Mr. Gorton.

17                  MR. GLASSMAN: I believe Mr. Gorton and Mr. Tredinnick  
18 may want to speak after I speak depending upon what's covered.

19                  THE COURT: I see Mr. Gorton has now raised his hand.  
20 Wait a minute. Somebody has --

21                  MR. GLASSMAN: Based upon my --

22                  THE COURT: Somebody's talking to me for some reason.  
23 I don't know why. Okay.

24                  Yeah. Mr. Tredinnick and Mr. Gorton. Okay. I'll  
25 come back to them. I see that.

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1                   MR. GLASSMAN: And you can bring them in at the same  
2 time now, if that's fine too.

3                   THE COURT: Okay. Ms. Parada, bring Mr. Gorton and  
4 Mr. Tredinnick in please.

5                   Mr. Gorton first and then Mr. Tredinnick --

6                   MR. TREDINNICK: Mr. Gorton has allowed me to make the  
7 initial remarks.

8                   THE COURT: I just want them to state -- both of them  
9 to state their appearances. That's all.

10                  MR. GORTON: Thank you, Your Honor. Mark Gorton of  
11 Boutin Jones on behalf of the Northern California Power Agency,  
12 the Transmission Agency of Northern California, Sonoma Clean  
13 Power Authority, Valley Clean Energy Alliance, Redwood Coast  
14 Energy Authority, and the city of Santa Clara doing business as  
15 Silicon Valley Power. We refer to this group as the municipal  
16 objectors.

17                  THE COURT: Thank you. Mr. Tredinnick?

18                  MR. TREDINNICK: Thank Your Honor. Edward Tredinnick  
19 of Greene Radovsky Malone and Share and on behalf of the city  
20 and county of San Francisco.

21                  THE COURT: Okay. One second. Give me one second.  
22 I'm trying to communicate with my staff at the same time.  
23 Okay. All right.

24                  Mr. Glassman, you volunteered to be the (break in  
25 audio) person, so you're up.

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1                   MR. GLASSMAN: Yes. Good morning, Your Honor. Paul  
2 Glassman of Stradling Yocca Carlson and Rauth for the South San  
3 Joaquin Irrigation District.

4                   Now some of the problematic plan discharge and release  
5 provisions have been dealt with, like 10.3 and 6.1, but others  
6 have not and I'd like to address the problems with 8.2(e) and  
7 also 10.9(f), and I'm going to talk for a moment about our view  
8 on assumption, and I'll come back and address a couple of  
9 points addressed in your colloquy with Mr. Bray to explain how  
10 it fits in with what I've said. But give me a moment.

11                  The statement in 8.2(e) -- I'm going to talk about  
12 some of the specific language -- that assumption constitutes  
13 satisfaction and release of claims and causes of action arising  
14 under assumed executory contract. It effectively makes the  
15 provision a discharge and an improper one and 365 entitles the  
16 debtor to the assumption of an executory contract if it agrees  
17 to perform all of the obligations under the contract and cures  
18 any defaults as a condition to assumption. The section says  
19 nothing about claims. It only deals with contracts and  
20 defaults under contracts, so it shouldn't discharge or even  
21 affect claims unless they also happen to be defaults, and then  
22 only to the extent they are cured.

23                  And Section 365 certainly should not discharge causes  
24 of action. So the debtor should get what they are -- we  
25 believe -- what they're entitled to under 365 and the language

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1 in 8.2(e) would eviscerate the protections afforded to a  
2 counterparty.

3 Now you're going to -- let me explain now -- in that  
4 view, you would ask, what happens if an amount -- if there was  
5 an amount that was not asserted as a -- if the -- a  
6 counterparty did not assert -- if it wasn't discharged and then  
7 there was an amount that they did not raise, what would happen  
8 to it. And you said -- the -- you suggested, Your Honor, that  
9 it's really not a discharge issue perhaps, but a -- and I  
10 think -- an estoppel issue. So it would be taken care of  
11 because when a contract is assumed, we move from the world of  
12 bankruptcy law and claims into contracts and state law and  
13 defaults, and so there would be a -- if there was an attempt to  
14 assert that default later, it could be the -- the debtors could  
15 assert a waiver estoppel and that that could not be permitted.

16 But the problem with the treating -- the not  
17 treating -- I'm -- excuse me. The problem here in dealing with  
18 the claims issues is that the debtors take the position that --  
19 because the contracts have these provisions in them that the  
20 claim arises at the time of the contract and it's a pre-  
21 petition claim discharged under 502(e) and that that -- but  
22 that would mean that post-assumption -- that post-assumption  
23 that the counterparty could not assert a right to payment, but  
24 we've all agreed that it should. The way to fix that from a  
25 conceptual standpoint is to take the -- is to eliminate the

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1 claims upon assumption, and then you've moved into the area of  
2 assumption because there's a very big difference between the  
3 way these obligations are treated under state law and under an  
4 assumed contract and claims in bankruptcy.

5 The indemnity and contribution obligations are a claim  
6 in bankruptcy that the debtors say could be discharged, but  
7 what -- upon assumption, they become part of the contract, and  
8 then it's clear that if there's a triggering event later, that  
9 obligation can be enforced by the counterparty, and I believe  
10 that's the way it should work.

11 THE COURT: Well, okay --

12 MR. GLASSMAN: If the triggering event occurred first  
13 before bankruptcy, it would part of cure.

14 THE COURT: Well, Mr. Glassman, suppose after  
15 assumption, some events occur that give rise to an indemnity  
16 claim. Wouldn't that be assertible against the company?  
17 Against PG&E? If some event occurs after PG&E assumes the  
18 contract --

19 MR. GLASSMAN: Well --

20 THE COURT: -- (break in audio) it didn't even exist.  
21 If the facts didn't even exist, but whatever facts would give  
22 rise to an assertion of indemnity, why wouldn't -- who says  
23 they would be freed of that?

24 MR. GLASSMAN: Well, herein lies the rub, Your Honor.  
25 It's because it's -- you're right. They should be able to, but

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1 as Mr. Schiff averted (sic) to, the problem is that the debtors  
2 take the position that if indemnity and contribution of a  
3 contractual nature is treated as a claim, as soon as the  
4 contract is executed, the possibility of -- that there could be  
5 a later event is in fair contemplation, and therefore, it  
6 should be discharged.

7           Their position, as I understand it, is that because  
8 it's a contractual indemnity and contribution obligation that  
9 are under the contract, it should be discharged, and this is a  
10 difference between the way contracts -- assumed contracts --  
11 would be treated, and the way indemnity and contribution claims  
12 under a contract would be treated if, say, there was no  
13 assumption. There was a rejection.

14           THE COURT: Okay. I --

15           MR. GLASSMAN: You know, they say -- the debtors would  
16 say they were cut off -- they would be cut off and they  
17 couldn't be asserted is (break in audio) -- that's the issue.  
18 If the -- if we all agree that they can be asserted pre-  
19 petition when the event occurs on a contract, then I think that  
20 would solve a lot of the problems.

21           THE COURT: Well, let me rephrase my question. To  
22 hear you argue it, you're suggesting that if you look at the  
23 document, the contract that exists between the company and your  
24 client, then Mr. Karotkin wants to just tear out and strike  
25 from the document an indemnity provision that hasn't even been

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1 triggered.

2 MR. GLASSMAN: That's exactly right.

3 THE COURT: Yeah. But I don't hear him making that  
4 argument. And what I'm hearing him say if a claim existed  
5 or -- you distinguish between claim and cause of action. To  
6 me, a cause of action is a claim. If a claim exists pre-  
7 petition, it's the counterparty's responsibility to assert it,  
8 and much like my hypothetical with Mr. Bray, if there's a  
9 dollar amount that isn't asserted, it's lost. Whether it's  
10 discharged as a bankruptcy or a state law matter, I'm not going  
11 to worry about. The utility -- or the company has no post-  
12 petition liability for what couldn't have been asserted pre-  
13 petition. But if the contract is still in existence and events  
14 happen in the future, post-petition, and then the counterparty  
15 has a right of indemnity, I don't believe that I'm hearing the  
16 debtor say that that's gone.

17 MR. GLASSMAN: We could ask Mr. Karotkin that right  
18 now.

19 THE COURT: No, well --

20 MR. GLASSMAN: At the moment. If you would like.  
21 Because everybody on this side of the table believes that's  
22 what's being argued and that's part of the --

23 THE COURT: Mr. Karotkin, that's a yes or no question.  
24 Is the indemnity obligation gone for events that occur post-  
25 assumption?

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1                   MR. KAROTKIN: Your Honor, I think you put your finger  
2 on it, like, a number of times. The issue is -- and it has to  
3 be determined in the context of an actual claim that arises.  
4 You can't address it in a vacuum. You have to look at the  
5 claim and make a determination. As you said, did the claim  
6 exist prior to the time the cure had to be made -- the demand  
7 for the cure had to be made. It takes into account the fair  
8 contemplation. It takes into account those issues. You can't  
9 have a blanket response.

10                  I will tell you, if every single possible event  
11 happened post-assumption -- every single possible event -- you  
12 know, maybe under the -- probably under those circumstances, it  
13 would survive. But again, you have to look at each claim --  
14 one thing's become perfectly clear from all of this discussion  
15 is that to make a blanket rule on any of these things doesn't  
16 make any sense. But what does make sense is if and when these  
17 claims -- and I'll argue this later -- if and when these claims  
18 ever arise -- and they may never arise -- then, Your Honor, you  
19 can look at them in the context of the facts and circumstances  
20 before you. And then make a determination, should they have  
21 been asserted in connection with your -- should they not have  
22 been asserted? Does 502(e) apply? Does it not apply? But to  
23 make blanket rulings that, you know, everyone seems to be  
24 arguing, is not appropriate.

25                  MR. GLASSMAN: Mr. Karotkin -- if I may ask Mr.

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1 Karotkin a question. So you are not arguing that under  
2 bankruptcy law, a -- that where there's a contractual indemnity  
3 that the claim arises at the time the contract was executed and  
4 therefore is a pre-petition claim in bankruptcy.

5 MR. KAROTKIN: I think I said what I --

6 MR. GLASSMAN: It's just a simple question.

7 MR. KAROTKIN: These are --

8 THE COURT: Mr. Glassman --

9 MR. KAROTKIN: I think I made quite clear my position.

10 THE COURT: Mr. Glassman, I'll put it a different way.

11 If there's a writing called a contract and that  
12 contract is between PG&E on the one hand and your client on the  
13 other and there's an assumption of that contract, Mr. Karotkin  
14 doesn't get to take his scissors and slice off out of the  
15 document the indemnity clause. What he does get to do, if some  
16 day in the future something happens and you assert an  
17 indemnity, he can go back and say, hey, guess what, you should  
18 have raised that before bankruptcy. And I believe if you could  
19 have raised it or it was contemplatable -- if -- to put it in  
20 bankruptcy words, if it existed as a claim -- not that it  
21 exists as a contractual term, but did a right of action  
22 exist -- he will probably win that argument, and if he can't  
23 make that argument, you will win the argument. And it's that  
24 simple. It's as though the contract gets rebooted on the  
25 petition date or the effective day, rather, and anything that

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1 existed before should have been asserted. If it couldn't have  
2 been asserted because there's no claim, then it didn't need to  
3 be asserted, and that -- I'm almost telling you, that's how I  
4 would interpret the statute and rule -- or not statute. Excuse  
5 me. That's how I would apply this principle, and to the extent  
6 that Mr. Gorton or you or Tredinnick or Pascuzzi thinks that  
7 somehow Mr. Karotkin has pulled a fast one and he gets a  
8 blanket release of anything that happens in the future, he will  
9 not. And I don't think he's even asking to. It's fact-driven,  
10 and if the contract sat there on the shelf for five years and  
11 nobody even had anything come up but something came up on the  
12 morning after the effective date, you're protected. They're on  
13 the hook.

14 MR. GLASSMAN: That helps quite a bit, Your Honor.  
15 And we hope the language in the -- the final language will  
16 reflect that.

17 Let me move onto another issue you just raised that  
18 the cause of action is a claim, and unfortunately, it's not the  
19 case because cause of action -- and you were maybe talking  
20 about generic action --

21 THE COURT: The bankruptcy definition of claim in this  
22 document. See? That's by Bankruptcy Code.

23 MR. GLASSMAN: Okay. Yes. And -- but cause of  
24 actions are also cut off in 502(e) -- I'm sorry -- are cut off  
25 in 8.2(e) and cause of action has a very broad definition. I

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1 lost the Court. Excuse me.

2 THE COURT: What? I'm sorry. What?

3 MR. GLASSMAN: I lost you -- your screen. So the  
4 cause of action has a very broad definition, way beyond the  
5 common understanding of cause of action and it cuts off all of  
6 these matters that are not even claims, like, before the other  
7 day I was talking about powers of eminent domain -- has powers,  
8 everything, and so these -- we're talking about whether claims  
9 could be cut off and questioned, but certainly things that are  
10 not claims should be cut off and cause of action has no  
11 business in this language and that's the point because it  
12 includes a multitude of matters that cannot be impacted by a  
13 plan. And I invite the Court to look at the definition of  
14 cause of action. I don't want to take the Court's time because  
15 many parties have argued it, but it goes on for half a page and  
16 it includes things like rights, powers, privileges, franchises,  
17 unknown claims and so forth.

18 THE COURT: Well, what are you --

19 MR. GLASSMAN: (Indiscernible) and et cetera.

20 THE COURT: Mr. Glassman, what are you reading? Are  
21 you reading the plan or the code?

22 MR. GLASSMAN: Oh no. I was just reading the  
23 definition of -- I was flipping to the definition of causes of  
24 action in 1.21 of the plan, if you were --

25 THE COURT: Look at 1.015 of the Bankruptcy Code.

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1 Doesn't that include cause of action? It may not use the  
2 words, but it -- doesn't --

3 MR. GLASSMAN: Claim is liability on a claim. Right  
4 to payment.

5 THE COURT: Yeah, but not a (break in audio).

6 MR. GLASSMAN: This is (break in audio), but I invite  
7 the Court to look at the definition in 1.21 is -- it would  
8 include, for example, the -- we were -- as we were arguing, it  
9 would include powers of -- it might include powers of eminent  
10 domain. It includes many items that would not constitute -- I  
11 would argue would not constitute claims under the Bankruptcy  
12 Code and --

13 THE COURT: Okay. Mr. Karotkin --

14 MR. GLASSMAN: -- has no business in a discharge.

15 THE COURT: Mr. Karotkin told us the other day that  
16 eminent domain got solved. I thought that's a nonissue now.  
17 Isn't that right, Mr. --

18 MR. GLASSMAN: Well, yeah.

19 THE COURT: Eminent domain is no longer an issue,  
20 right?

21 MR. KAROTKIN: Yes, sir. In fact, it's in 1.13 at Mr.  
22 Glassman's request. I mean, I have to tell you his appetite is  
23 insatiable for changes to the plan. We've covered his  
24 legitimate arguments.

25 THE COURT: Okay. Don't --

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1                   MR. GLASSMAN: Well, with all due respect to Mr.  
2 Karotkin, I'm going to talk about all the different provisions  
3 we'd thought we'd addressed, like in 10.3, and you've got the  
4 same -- it's like whack a mole -- the same release provisions  
5 keep cropping up throughout the plan, so --

6                   THE COURT: Okay.

7                   MR. GLASSMAN: May I continue?

8                   THE COURT: Time out. Time out one second. You can  
9 continue, but we've been going for two hours. I'm tired, and I  
10 want to take a midday break. I've also got some technical  
11 advice over the weekend that maybe my computer and maybe some  
12 of yours needs to take a break after a while and that that's  
13 causing some of these hang-ups. I don't know if that's true or  
14 not, but it may be a function of the process of speed or the  
15 RAM or something. I don't understand the technical of it, but  
16 I'd like to ask all three of you gentleman how much time you  
17 think you need to make your comments.

18                  Mr. Glassman, how much time do you need -- more do  
19 you --

20                  MR. GLASSMAN: I would say maybe ten minutes.

21                  THE COURT: Mr. Tredinnick and Gorton? Are you  
22 letting him take the lead on this?

23                  MR. GORTON: I'd -- sorry, Mr. Tredinnick. I'd like  
24 to have about two minutes, Your Honor, just to wrap.

25                  THE COURT: Mr. Tredinnick, the same?

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1                   MR. TREDINNICK: Your Honor, yeah. Two minutes --

2                   THE COURT: Okay.

3                   MR. TREDINNICK: -- at the most.

4                   THE COURT: I'm not going to -- all right. I'm going  
5 to take 10 plus 2 plus 2 equals 20. My math. And I'll try not  
6 to ask any more questions and I'll ask Mr. Karotkin not to also  
7 unless he wants to or I want to. And then we're going to take  
8 a midday break.

9                   Go ahead, Mr. Glassman.

10                  MR. GLASSMAN: So I -- on -- just to wrap up on the  
11 cause of action, I would ask the Court to review 1.21 and also  
12 in our papers, we got through all of the -- list a lot of the  
13 items that we believe should not be in there because they're  
14 not quite -- and so that's why ask that that language be  
15 deleted because it's a defined term that is extremely broad and  
16 it goes well beyond anything that properly be discharged in the  
17 plan.

18                  And so in addition to the problems with the language  
19 in 8.2(e) -- of course, the plan supplement also has language  
20 that would eliminate the debtor's indemnity and contribution  
21 rights while allowing -- while requiring the counterparty to  
22 perform and we believe -- let me just ask. If the Court -- the  
23 Court indicated it wanted to take its break. I'm happy to take  
24 the break now and finish up afterwards and I'll make it even  
25 shorter.

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1           THE COURT: No. I want to take a break --

2           MR. GLASSMAN: Okay.

3           THE COURT: We -- wait. Somebody's got a phone  
4 ringing.

5           MR. GLASSMAN: That's my phone. I apologize, Your  
6 Honor. That's --

7           THE COURT: Can you turn --

8           MR. GLASSMAN: -- it's the barking dog and the ringing  
9 the phone.

10          THE COURT: Okay, while we're waiting for Mr.  
11 Glassman's phone to stop ringing, I'm going to -- I've got a  
12 signal from my office that Mr. McKane from Calpine wanted to be  
13 heard also, and I think that's related to this, so as soon --  
14 Mr. McKane, if you can hear me, when Mr. Glassman and Gorton  
15 and Tredinnick finish, I will bring you in and you'll be the  
16 final speaker for -- till the midday break.

17          So go ahead and finish, Mr. Glassman.

18          MR. GLASSMAN: Your Honor, so if the indemnification  
19 and contribution obligations in the plan were excised, then  
20 that would be an unfair burden on the counterparty, such as my  
21 client has numerous contracts with PG&E including  
22 interconnection agreements and easements and all of that as  
23 described in the declarations and exhibits that we submitted.

24          Now --

25          THE COURT: Okay. For what it's worth, and you know,

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1 this isn't a final ruling, but you can take to the bank my  
2 interpretation of the law here. When a debtor assumes a  
3 contract, the contract is still in place -- if the debtor gets  
4 freed of is things that could have been translated into claims  
5 as defined in the Bankruptcy Code that existed at least pre-  
6 petition. I won't get into a speculation about the window  
7 between petition date and effective date. I don't know that we  
8 have to worry about that today.

9 And therefore, when you have something like an eminent  
10 domain entitlement that isn't affected, if you have a cause of  
11 action for eminent domain and you didn't assert it, then maybe  
12 that would be a different result. And the same is true with  
13 all these other things.

14 So that's just my interpretation. I will go back and  
15 review the provisions that you've cited me to, Mr. Glassman,  
16 that I don't believe that I would tolerate and frankly, I don't  
17 think the debtor is trying to cut out portions of a contractual  
18 relationship that it likes -- that it doesn't like and leave  
19 the good things in there. But I think it is entitled to get  
20 the benefit of -- be sappy and call it the fresh start, be  
21 legal and call it the DIPs charge, be technical and call it the  
22 ability to assume a contract and put the burden on the  
23 counterparty to claim or cry foul or claim -- assert a claim if  
24 there's something that should be part of the cure.

25 It's a little tougher question when it's noncurable.

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1 I think I put to one of the counsel earlier in the hearing last  
2 week about a landlord who (break in audio) for something that's  
3 happened in the past that's not curable. That's a different  
4 issue. Go ahead.

5 MR. GLASSMAN: Thank you, Your Honor. So I want to  
6 turn now to Section 10.9(f), where the cause of action language  
7 is also in that provision. That's an injunction provision,  
8 Your Honor. And so my comments about the objectionable --  
9 objections to cause of action would also apply to 10.9, which  
10 also lists -- not only does it say cause of action, but it  
11 lists a lot of the terms in the provision. This is 10.9(f).

12 But another problem with this section is that -- this  
13 injunction section, it says that the confirmation order enjoins  
14 the commencement or prosecution by any person or entity of any  
15 claims and causes of actions that are released or extirpated.

16 So the scope of the injunction, which applies to any  
17 party or entity, is broader than the scope of plan releases  
18 that apply only to releasing parties, for example, in the  
19 10.9 -- the opt-in release. So creditors who did not even opt  
20 into the plan release would be swept within the language in  
21 10.9(f). So I believe this provision, if it was not intended  
22 that way, it should be clarified so that a party who was -- is  
23 not enjoined, who wasn't -- who hadn't -- wasn't part of the  
24 release, is now somehow enjoined because of the -- the language  
25 doesn't match up.

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1           It's similar to the problem that was raised on 10.9(e)  
2 by the I think the state agencies, where I think the language  
3 in one section doesn't match -- or the plan doesn't match up  
4 with another section. And so the injunction is broader -- is  
5 supposed to be intended to deal with releases, but the language  
6 is broader. It includes more parties, such as our -- my  
7 client.

8           THE COURT: Okay, got it.

9           MR. GLASSMAN: And that's why (indiscernible).

10          THE COURT: Thank you.

11          MR. GLASSMAN: And we can submit -- okay.

12          Then that is -- given the Court's comments on the  
13 cause of action, I'll wrap up before I close on the --  
14 regarding the evidentiary objections raised by the debtors to  
15 our exhibits and declarations, I want to say that they're  
16 clearly relevant because they contain factual information  
17 regarding the pending legal actions and underlying  
18 administrative procedures to show there was a real controversy  
19 as to whether the plan applied to them.

20          We've talked about them, so I want the record to be  
21 clear on those claims. And the exhibits and the request for  
22 judicial notice or public records. They're not hearsay. The  
23 declarations simply describe and authenticate them and provide  
24 helpful context. And the declarations are also relevant on the  
25 executory contract issues that we've discussed. So I would ask

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1 that the objections be overruled and the exhibits be admitted  
2 into evidence.

3 And I can give you the numbers of -- the docket  
4 numbers if you would like --

5 THE COURT: You don't need to. You don't need to.  
6 I'm aware of them.

7 MR. GLASSMAN: Okay. And that -- that's -- then I'm  
8 done, Your Honor.

9 THE COURT: All right, thank you Mr. Glassman.

10 Mr. Gorton?

11 MR. GORTON: Thank you. Thank you, Your Honor.  
12 Appreciate the opportunity to close, if you will.

13 The municipal objectors have multiple contracts with  
14 PG&E related to highly regulated and complex (break in audio).  
15 Their objections have not been designed to impede the recovery  
16 by the nonconsensual wildfire victims, but are intended to  
17 protect the municipal objectors and their long-term  
18 relationships from being subjected to the preclusive effect of  
19 a confirmed plan that includes provisions exceeding what is  
20 authorized under the code concerning discharge, release and  
21 interpretation.

22 To a large extent, those objections and those of the  
23 federal and state agencies and our local government allies,  
24 city of -- county of San Francisco, the South San Joaquin  
25 Irrigation District, the city of American Canyon, and the

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1 Feather River Water District have been successful in prompting  
2 the proponents in the necessary plan amendments, subject to, of  
3 course, these final arguments that Mr. Bray, Mr. Pascuzzi, Mr.  
4 Troy, and Mr. Glassman, perhaps Mr. Tredinnick have that need  
5 to be resolved.

6 With regard to the specific and separate supplemental  
7 objections by the city of Santa Clara concerning its Grizzly  
8 hydroelectric plant, PG&E has advised us that the FERC-approved  
9 agreement is not an executory contract, which we have a  
10 difficult time understanding. But we are working with PG&E now  
11 (indiscernible) the mechanism for resolving those issues and  
12 our objection in that regard, for the specific objection for  
13 the city of Santa Clara is not an impediment to confirmation.

14 In conclusion --

15 THE COURT: And I take it as any objection by Santa  
16 Clara is simply treated as withdrawn?

17 MR. GORTON: With regard to that supplemental  
18 objection about the treatment of the executory contract and the  
19 deletion from the schedule.

20 THE COURT: Okay, okay.

21 MR. GORTON: We're looking at that and it's not an  
22 impediment to confirmation.

23 THE COURT: Okay.

24 MR. GORTON: In conclusion, Your Honor, the classes of  
25 wildfire victims who have accepted this plan deserve their

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1 compensation. And all creditors, including the municipal  
2 objectors and their allies, deserve a plan that affects them no  
3 more than the law allows. Thank you.

4 THE COURT: Thank you, Mr. Gorton.

5 Wait one second Mr. Tredinnick. I've got to look at a  
6 message here.

7 Okay, Mr. Tredinnick?

8 MR. TREDINNICK: Thank you, Your Honor. On behalf of  
9 the city and county of San Francisco, I -- which has many  
10 relationships with PG&E, including many indemnity and  
11 contribution issues, I just want to mirror the comments that  
12 have been made today. I'm not going to go into and repeat  
13 them. They've been made on several occasions.

14 We also believe that the provisions of 8.2(e) that  
15 were detailed by Mr. Pascuzzi and Mr. Troy last week were well-  
16 taken and we would encourage the Court to take a look at those,  
17 as far as resolving the issues that have been raised.

18 As to the other objections that we have -- that we had  
19 raised, the remainder of those have been resolved by the  
20 debtors through their amendments to the plan that were made  
21 last week. So the city would just submit its objections in  
22 joining with the other parties that have raised the objections  
23 to the indemnity contribution issues and the issues in 8.2(e).  
24 And thank you, Your Honor, for your assistance in getting this  
25 thing done. Thank you.

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1                   THE COURT: Okay, thank you, Mr. Tredinnick.

2                   MR. TREDINNICK: Thank you.

3                   THE COURT: I'm going to let Mr. McKane come in.

4                   Ms. Parada, would you please remove the other three  
5 speakers? I'm going to fix my robe here that's coming undone  
6 here.

7                   And so Mr. Glassman, thank you.

8                   MR. GLASSMAN: Thank you, Your Honor.

9                   THE COURT: Mr. Gorton, thank you.

10                  Mr. McKane, would you please state your name for the  
11 record?

12                  MR. MCKANE: I believe it's still morning, Your Honor.

13                  Good morning, Mark McKane of Kirkland & Ellis for Calpine  
14 Corporation.

15                  THE COURT: Okay. You've been patient. You're on.

16                  MR. MCKANE: Thank you, Your Honor. And I recognize  
17 that Calpine has not needed to rise much with regards to these  
18 cases. And that's in part because Calpine has worked very hard  
19 with the debtors to have their contracts assumed. Calpine has  
20 dozens of contracts, our purchase agreements, and others with  
21 PG&E.

22                  We did file an objection, a limited objection, to the  
23 plan at 7214. I did file a notice of speaking attorneys at  
24 7489. I had asked for a few minutes. And really, what this  
25 comes down to is the issue that's been brewing today that we

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1 thought was resolved on Thursday, when we heard Mr. Karotkin  
2 say on the record for assumed executory contracts, contribution  
3 and indemnity claims will be assumed in their entirety.

4           And if that is the statement that goes into the plan  
5 and the order, that is all the revisions that we think are  
6 necessary. We think some of the stuff in the plan and  
7 specifically in the order would need to come out to give that  
8 full effect. And I'll file a --

9           THE COURT: Mr. McKane, were you able to review what  
10 was filed yesterday?

11           MR. MCKANE: Your Honor, what I've seen -- I have  
12 reviewed parts of what was done yesterday. I think the  
13 problems still arise in three areas. 8.2(e), which you've  
14 already heard about. And I actually think Mr. Troy was very  
15 succinct about this in his argument on Thursday, where he  
16 flagged that if 8.2(e) was limited to defaults, it would  
17 address the issue that you have been raising in your  
18 hypothetical.

19           All of your hypotheticals with regard to the exchange  
20 with Mr. Bray about the thousand dollars, if we tied assumption  
21 of contracts to defaults, capital D as used in the plan and as  
22 used in the code, as opposed to bringing in the concept of  
23 claims, that would be fine. Because what's causing people  
24 heartburn is this concept of does the scope of a claim include  
25 a contingent claim such that there could be a situation where

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1 an indemnity is cut off before the underlying claim is  
2 crystalized.

3 And this is not a hypothetical concern with regards to  
4 Calpine, Your Honor. And I will give you a very specific  
5 example. There are indemnity obligations with regards --  
6 between Calpine and PG&E as it relates to transactions that  
7 have occurred up in Sonoma and Lake County in the area of the  
8 Kincade fire.

9 The Kincade fire in this case has been decided to ride  
10 through. And under no circumstance could there be a scenario  
11 in which Calpine's contracts are assumed but somehow, under a  
12 function of the plan, an indemnity right was being cut off  
13 before the claims that are going to be adjudicated by victims  
14 of the Kincade fire are resolved. And that is a real issue  
15 here, Your Honor. This is not just a hypothetical concern.

16 THE COURT: Well, Mr. McKane, I'm a great fan of  
17 hypotheticals. If the Kincade fire was caused by an individual  
18 and that individual filed Chapter 7 today, would you have a  
19 basis to assert that the claim was not-dischargeable?

20 Let's assume the underlying entitlement. Let's say  
21 the individual, you know, you could make a case for arson.  
22 Would it be dischargeable or not? In other words, didn't -- is  
23 it something that was known or knowable, that the facts would  
24 give you or the victim reason to believe it should assert a  
25 claim?

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1 MR. MCKANE: Your Honor, I --

2 THE COURT: Excuse me, I misstated. Forget  
3 dischargeable or not. Would you have a claim? The individual  
4 files Chapter 7 and the trustee has a small amount of money to  
5 distribute. Do you have a claim that you could assert in that  
6 person's bankruptcy?

7 MR. MCKANE: It's a challenging question, Your Honor,  
8 because I don't think the work has been done by the  
9 investigators and made public sufficient to know whether anyone  
10 in Calpine's circumstance or PG&E's circumstance of any other  
11 victims of that fire, whether there has been enough causation  
12 determined as to what would happen.

13 I -- Calpine, because it is a careful corporation, may  
14 file a protective claim, recognizing a Chapter 7 -- you know,  
15 may not yield much recovery. But we don't know enough about  
16 that fire, because the investigations aren't done yet. It  
17 really comes down to the notice issues that you've been  
18 flagging about before. And your notice concern, Your Honor,  
19 can be addressed in the concept of default, not in the concept  
20 of claim. And that's really --

21 THE COURT: But that's not default. But that's --  
22 that's not a default. In other words, I understand in my  
23 hypothetical it's not a contractual relationship. But the  
24 point is, you know there was a fire. You know that the  
25 defendant may be culpable. And you've got two choices: file a

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1 claim or not.

2 MR. MCKANE: Right. Here --

3 THE COURT: And the safer thing is to file a claim,  
4 because if --

5 MR. MCKANE: And Your Honor, think about it here in  
6 this scenario with Calpine? With regards to the cure  
7 obligations to PG&E, we may come forward and say to, as part of  
8 our cure, what about Kincade? How are we going to address  
9 Kincade? You've agreed to assume all of our contracts. We've  
10 put -- we've filed proofs of claim. We've filed administrative  
11 proofs of claim, or protective rights there. How are you going  
12 to treat us with regards to Kincade, because we do not know,  
13 but we may suspect that you are the cause of that fire?

14 And in that scenario, what is PG&E going to do? Are  
15 we going to have a cure estimation proceeding to determine what  
16 rights I may have that are contingent on an indemnity  
17 obligation? That can't be the law. That's where the  
18 intersection between an indemnity obligation and a 365 doesn't  
19 match up with 502.

20 And what they're trying to hang their hat on, Your  
21 Honor, is 502(e). And there is no intersection between 365 and  
22 502, other than in the rejection context. It's only in 502(g),  
23 in the rejection context that we get into the discussion of  
24 what is a claim. And that's ultimately the conflating of  
25 principles that we have a concern with here.

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1           Their arguments that they want to make about notice  
2 and curing and default, that all rests within -- they have all  
3 their rights under 365. There is no case law that we have been  
4 able to find, that the UCC was able to find in their surreply  
5 that connects 562(e) to an assumed contract.

6           And Your Honor, the only case law that we've been able  
7 to identify says the exact opposite. And that is the in re G-I  
8 Holdings case from the bankruptcy court in New Jersey, 580 B.R.  
9 388 at 420, 421. And Your Honor, this was cited by the UCC in  
10 their surreply. We found the same case. And in that scenario,  
11 a debtor tried to do exactly what PG&E's trying to do here,  
12 which is assume the contracts, but leave behind some kind of  
13 contingent indemnity obligations.

14           The bankruptcy court punted it to a state court and  
15 then the subsequent state court said absolutely not, that you  
16 assume a contract as whole, as we all have learned in Noel  
17 (phonetic). And that when those indemnity obligations  
18 crystalized post-effective date, because the debtor had assumed  
19 the contract, even if there was some contingent obligation  
20 prior, it crystalized post-petition and the debtor had an  
21 obligation. It could not rely on res judicata or collateral  
22 estoppel from a confirmation order to cut off that right. And  
23 that is what we're saying here.

24           They've come forward with no law to support it. 502  
25 doesn't work on its face and the only case law that we're aware

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1 of goes against that. And so, what we're trying to say is rely  
2 on 365. Everyone's on notice on how to cure. If there's an  
3 argument down the road, maybe it comes back to Your Honor. But  
4 it's not a 502(e) issue. There's no case law that supports it.  
5 And I think Mr. Bray has a legitimate point and it actually  
6 comes to a comment that you had said earlier today. And I  
7 think that -- excuse me, Mr. Karotkin said earlier today, which  
8 is the plan's not the proper procedure to raise these issues.

9 As they crystalize, if they ever do crystalize, we --  
10 the counterparty will work it out with the debtor. And if they  
11 can't work it out with the debtor, we're probably coming back  
12 to Your Honor for an interpretation. But the procedure that  
13 they're putting forward is inappropriate.

14 THE COURT: Okay.

15 MR. MCKANE: And so with that, I have -- apologies,  
16 Your Honor.

17 THE COURT: I appreciate your comments, Mr. McKane.  
18 That's (indiscernible).

19 MR. MCKANE: Yes. I would just have one thing, just  
20 specifically with regards to -- I haven't seen Mr. Bray's  
21 proposed corrections to the order, but I would say that the  
22 easiest way to cut through this from a contract counterparties  
23 perspective is to strike paragraph 37 of the proposed  
24 confirmation order. And then specifically, there is a section,  
25 paragraph 43, with regards to energy procurement contracts.

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1 Calpine obviously is one of the major counterparties there.  
2 And all you would need to do to make this absolutely clear  
3 would be to add the word indemnity obligations in the second  
4 sentence in front of setoff and recouping rights.

5 And that's it, Your Honor. Those are all my remarks.  
6 I thank you for your time.

7 THE COURT: Thank you, Mr. McKane. I appreciate it.  
8 We're going to take you out of the panel right now.

9 Hold on one second, Mr. Karotkin. I'm going to give  
10 you a break, too. All right. Well, there are some names on  
11 the hand raise that I don't recognize and I'm not going to  
12 identify them today. I'm going to stick with our plan and take  
13 a mid-day break.

14 Mr. Karotkin, you and Mr. Johnston are next up, you  
15 think? Or do you anticipate anybody else that you know of once  
16 we're here, because I don't -- oh, you know what, it looks like  
17 I -- let me -- I do have a message to my clerk that a number of  
18 people also want to be heard on this UCC issue from Mr. Lubic,  
19 Mr. Winsberg, Newman.

20 How about you, have you heard from anybody, Mr.  
21 Karotkin?

22 MR. KAROTKIN: I received -- I think I received a copy  
23 of the same email that Ms. Parada received on that and --

24 THE COURT: Okay.

25 MR. KAROTKIN: I believe they had sent us emails last

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1 week about this, that they did want some time.

2 THE COURT: What -- but when -- what's -- let's hold  
3 that for a moment. Am I correct, then, that you and Mr.  
4 Johnston wanted essentially to make a closing argument for  
5 matters --

6 MR. KAROTKIN: Yes, Mr. Johnston is going to address  
7 the PERA, the response to the PERA objection. And I intended  
8 to address the UCC and the other parties' objections, with  
9 respect to the issue we're discussing now. And some of the  
10 remaining objections, which I think are quite few, some of  
11 which were raised in connection with the UCC, with respect to  
12 certain progress of the proposed order, including 8.2(e) and  
13 10. --

14 THE COURT: Yeah, one person that I was scheduled or  
15 anticipating hearing from, who I don't know -- I don't know  
16 where we are on that, maybe he's listening, but I'm drawing a  
17 blank. The trustee -- the fire victim trustee's counsel. I  
18 believe it's Mr. Molton (phonetic). Mr. Molton, if you're in  
19 the audience, would you just raise your hand so I know that  
20 you're out there hearing my comments?

21 Okay, well I don't see him at the moment. All right,  
22 let me do this, I am going to take a break, but I'm going to  
23 take a whole hour. How risky of me? Again, these are very  
24 long days to keep track of everybody, so I'm going to resume at  
25 1 o'clock San Francisco time.

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1           I'm going to do my best to hear from the small group  
2 of people who have contacted my law clerk or my court deputy.  
3 And Mr. McDonald, if you are interested in being heard, you  
4 need to send an email to my courtroom deputy as to what it is  
5 you wanted to be heard about in the next little while, because  
6 I may choose not to call on you.

7           And I do see from my courtroom deputy Mr. Molton -- I  
8 misspoke his name, Mr. Molton is in the audience. Mr. Molton,  
9 I don't see you raising your hand, but I'm assuming that it  
10 would be helpful to have you speak.

11           So here's what I'm going to do. Sometime before 1  
12 o'clock I will review any requests that come in from other  
13 persons, like the person I just named, to my courtroom deputy.  
14 And I'll make a decision whether to call on that person or not.

15           My expectation -- well, then I will also look at the  
16 parties who asked to be heard that I just named, Mr. Lubic and  
17 the others, send Ms. Parada your estimated time request and I  
18 will make my best judgment on it.

19           Mr. Karotkin, I'll assume you and Mr. Johnston will  
20 come after I hear from those folks. And if Mr. Molton wishes  
21 to be heard, I'll probably take him ahead of you and Mr.  
22 Johnston. From my point of view, you and Mr. Johnston are the  
23 closing act for today. And --

24           MR. KAROTKIN: Okay, so I just would note that for  
25 purposes of my closing act, I believe Mr. Bennett and Mr.

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1 Tsekerides would like to be added to the panel, as well.

2 THE COURT: Okay. Okay. My guess is that we'll be  
3 doing that somewhere around 1:30 our time. I'm not going to  
4 be -- it's simply not going to take a lot of time for the  
5 people that want to get in. But I am going to take the break  
6 for what I said for a number of reasons. So I will be on --  
7 see you all back in the virtual courtroom at 1 o'clock San  
8 Francisco time.

9 Thank you for your time. Thank you to the staff.

10 MR. MCKANE: Thank you, sir.

11 THE COURT: All right.

12 (Recess from 12:00 p.m., until 1:00 p.m.)

13 THE CLERK: Okay, we're recording now, Your Honor.

14 THE COURT: All right. We're resuming our hearing.  
15 It's 1 o'clock San Francisco time. A couple of announcements,  
16 I'm going to call on the following speakers in order: Mr. Hugh  
17 McDonald, Mr. Lubic, Mr. Wersberg -- Wes -- Winsberg, excuse  
18 me, and Mr. Heaton. I'm going to expect that the four of you  
19 can make your presentations in an aggregate of no more than  
20 thirty minutes. I just can't take more time than that.

21 Mr. Abrams has filed something and previously raised  
22 his hand. I am not going to be able to call on Mr. Abrams. He  
23 filed something in response to the debtors filing of the plan,  
24 another version of the plan yesterday. He can file whatever he  
25 wants, but it's not an action item and I don't intend to call

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1 on him. I'm aware of the filing.  
2 And Ms. McDonald, not Mr. McDonald, but Ms. McDonald  
3 had previously filed something in the form of a request and she  
4 wants information about Judge Donato and the hearing before  
5 him. I'm not going to call on Ms. McDonald. I know nothing  
6 about what's going on in Judge Donato's court. And if she  
7 wants to find out from others who are appearing in that court,  
8 there are other attorneys who have filed things recently,  
9 including Mr. Hallisey. She might consider contacting them.  
10 But there's nothing I can do to help her.  
11 So with that, I'll bring Mr. McDonald in.  
12 THE CLERK: Your Honor, Sam Newman with McKinsey, Inc.  
13 has also raised a hand.  
14 THE COURT: Mr. Newman was someone who had asked also.  
15 So I'll call on him after Mr. Heaton.  
16 So it's Hugh McDonald, Lubic, Winsberg, Heaton,  
17 Newman. And those are the last ones I'm going to call on.  
18 And Mr. Molton, you previously notified my courtroom  
19 deputy that you were satisfied with some information you heard  
20 on the record with counsel for the other claimants. You need  
21 to raise your hand only if there's something you want to be  
22 heard on today. I've got the message about something you're  
23 going to submit. So if you take your hand down, I won't expect  
24 you to give any other report. I thought perhaps you would want  
25 to do a status report. Okay.

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1 Ms. Parada, let's proceed.

2 THE CLERK: One moment while I bring Mr. McDonald in.

3 THE COURT: And Mr. McDonald, Mr. Lubic, Mr. Winsberg,  
4 Mr. Heaton, Mr. Newman, I'll remind you each, too, when you are  
5 on the screen and your mic is activated, then state your name  
6 for the record.

7 Mr. McDonald, good afternoon.

8 MR. MCDONALD: Can you hear me -- can you hear me,  
9 Your Honor?

10 THE COURT: I can. So please state your name and  
11 let's -- welcome.

12 MR. MCDONALD: Thank you, Your Honor. Hugh McDonald,  
13 Troutman Sanders, here on behalf of Consolidated Edison  
14 Development. Thank you for the opportunity to briefly address  
15 the Court on the issues that have been addressed by Mr. Bray  
16 and Mr. McKane.

17 Your Honor, I rise because of concern and some of the  
18 comments that have been made thus far in these discussions.  
19 Consolidated Edison Development, through its affiliates, has  
20 sixteen projects with PG&E and supplies 665 megawatts of  
21 renewable energy to PG&E. Con Edison is a counterparty to both  
22 power purchase agreements and interconnection agreements with  
23 PG&E.

24 It seems, Your Honor, we started this case with PPA  
25 controversies and it looks like we potentially are ending this

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1 case with PPA controversies. And I don't want to go back over  
2 the prior issues we dealt with at the very outset of this case.  
3 What I would like to do is point out two points of concern that  
4 we have with respect to the provisions related to the indemnity  
5 and the assumption of executory contracts.

6 In particular, Your Honor, the interconnection  
7 agreements that Con Ed and many of the other energy providers  
8 are parties to -- with PG&E also involve the California ISO.  
9 They are tripartite agreements. And indeed, these agreements  
10 are part of PG&E's approved (indiscernible).

11 In fact, the very indemnification provisions we are  
12 discussing here have been approved specifically by FERC orders  
13 for inclusion in both small and large generation  
14 interconnection agreements. Those are --

15 THE COURT: All right. Excuse me, they've been  
16 approved by whom?

17 MR. MCDONALD: FERC, Your Honor.

18 THE COURT: Okay.

19 MR. MCDONALD: In FERC orders 2003 and 2006. I think  
20 as Mr. Bray noted and cited to the Frontier Properties case,  
21 the debtor can't cherry-pick the provisions it wants to assume  
22 as part of the assumption of an agreement. The agreement  
23 itself must ride through the bankruptcy in effect and must be  
24 performed in full, on a go-forward basis, as if the bankruptcy  
25 didn't happen.

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1           By allowing PG&E to shed what would be a potential  
2 unknown pre-petition indemnity claims through this process,  
3 PG&E would be effectuating a nonconsensual modification both  
4 its power purchase agreements and its interconnection  
5 agreements.

6           Indeed, Your Honor, the CPUC approved the very PPAs  
7 that we are dealing with. And the interconnection agreements  
8 are FERC jurisdictional contracts. Unlike the assumption or  
9 rejection issue we dealt with with Your Honor at the outset of  
10 these proceedings, this is an attempt to modify a provision by  
11 cutting off liability for potentially unknown conditions or  
12 claims that may exist without having to go into a proper  
13 regulatory proceeding.

14           As Your Honor is aware, the PUC has approved PG&E's  
15 plan and it found that it complied with AB 1054's requirement  
16 that the plan be consistent with California's renewable energy  
17 goals. And this was premised, Your Honor, on PG&E's assumption  
18 of all of this renewable energy contract. PG&E represented to  
19 the PUC that it was, in fact, assuming all energy-related  
20 contracts. It did not differentiate on any of the provisions  
21 or saying it was not going to perform all of its obligations  
22 underneath those contracts.

23           The nonconsensual modification of a FERC or PUC  
24 contract -- regulated contract -- requires their approval  
25 before those modifications can be effective.

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1                   THE COURT: Did PG&E take any position before the  
2 commission that's contrary or inconsistent with the position  
3 that's -- you're arguing here?

4                   MR. MCDONALD: No, Your Honor. The only position PG&E  
5 took before the commission was that it was satisfying the AB  
6 1054 requirement through the assumption of all of its renewable  
7 energy contracts. And yet, the plan itself states that they  
8 are assuming that all the renewable energy contracts are deemed  
9 assumed.

10                  THE COURT: Well, what I'm saying is did they make any  
11 statement to CPUC that says we're assuming it, but we're  
12 actually rejecting some of these indemnity provisions of the  
13 contract?

14                  MR. MCDONALD: Your Honor, I listened to all of the  
15 PUC proceedings and I never heard a statement to that effect  
16 from PG&E to the commissioner.

17                  THE COURT: Okay.

18                  MR. MCDONALD: Your Honor, the (indiscernible) that  
19 was advocated by Mr. McKane to paragraph 43 I think works. By  
20 including the indemnity provisions in that, it'll demonstrate  
21 that PG&E is, in fact, not seeking to have a nonconsensual  
22 modification of either a FERC or PUC jurisdictional contract.  
23 Otherwise, Your Honor, the parties will have to seek some  
24 determination from the appropriate regulatory authorities at  
25 some point, seeking appropriate relief from Your Honor,

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1 obviously, first that the provisions of the plan in fact do not  
2 effectuate a modification of those indemnity obligations.

3 Frankly, Your Honor, we don't know what claims exist.  
4 But the purpose of the assumption, I think as you heard from  
5 both Mr. Schiff and Mr. McKane and Mr. Bray, is that you don't  
6 have to go out and hunt down and figure out every potential  
7 contingent claim.

8 Once, and it is clear from the Frontier Properties  
9 case, which is the leading precedent in the circuit, PG&E must  
10 perform these PPAs and interconnection agreements as if this  
11 bankruptcy never occurred. In order to do so, they should not  
12 be able to modify their indemnification obligations as part of  
13 a plan.

14 THE COURT: Mr. McDonald, hold that thought for a  
15 minute.

16 Ms. Parada, bring Mr. Karotkin in.

17 Mr. Karotkin raised his hand. Maybe he's going to  
18 solve the problem for us, Mr. McDonald. Stay tuned.

19 MR. KAROTKIN: I'm sorry, Your Honor. I raised my  
20 hand because I was having a hard time getting in at the outset,  
21 so I apologize.

22 THE COURT: Actually, I -- it was my fault. I told  
23 Ms. Parada she didn't need to bring you in. I didn't think you  
24 wanted to be in.

25 MR. KAROTKIN: Oh, okay.

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1           THE COURT: Here you are.

2           MR. KAROTKIN: Maybe I should leave.

3           THE COURT: Well, do you want to respond to something  
4 Mr. McDonald said?

5           MR. KAROTKIN: I'm happy to respond. I think that  
6 first of all, a couple of things. Number one, what Mr.  
7 McDonald -- the last thing that Mr. McDonald said is actually  
8 wrong and not the law. And I think Your Honor, you stated that  
9 quite clearly before. You don't get a free pass. You don't  
10 get a free pass on an assumption. And if there are cure  
11 amounts that have to be asserted, they have to be asserted. I  
12 think that's clearly the law. That was addressed in the Arriva  
13 Pharmaceuticals case, in fact, coming out of your court, not  
14 you, Your Honor, one of your colleagues.

15           And again, what Mr. McDonald is saying is the same  
16 thing that everybody else is saying, that let's address these  
17 claims if and when they arise in the context of the facts. And  
18 it may be that we have no dispute with Mr. McDonald. It may be  
19 that we have no dispute with Mr. Kane (sic). It may be that  
20 this will all just go away.

21           But what these people are asking for, and Mr. Bray is  
22 asking for, is a blanket pass, a totally blanket pass for  
23 everybody, that, with respect to an assumed executory contract,  
24 you don't have to comply with -- what Your Honor said, that you  
25 don't have to comply with the Arriva Pharmaceuticals case and

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1 that everything passes through, no matter what. Whether you  
2 should've thought of it or not, it all passes through. And  
3 that's just not the law.

4 Let everybody -- if this -- again, if it ever happens,  
5 we can address the claims when they arise. But it's not  
6 appropriate today for this court to say no matter what, people  
7 get a free pass. That's not the law. If we don't have rights  
8 under 502, we don't have rights. But let's address it in the  
9 context of a claim that actually arises if it ever arises.  
10 That's what we're saying.

11 THE COURT: Well, you're saying what you said before.  
12 That's fine.

13 Mr. McDonald, do you want to add anything further? I  
14 mean, I think it -- it's the same --

15 MR. MCDONALD: Yes, Your Honor. Briefly, I understand  
16 Mr. Karotkin's position. We have two -- and I know Your Honor  
17 has addressed and Mr. Karotkin has been addressing it. There's  
18 a difference between unknown claims or conditions that may  
19 exist, for example, in one of the areas where there's an  
20 interconnection situation versus a known-extent claim.

21 What Karotkin is talking about in the cure process are  
22 extent-known claims. What we are saying is to the extent there  
23 are any conditions or any claims that are unknown to us, that  
24 they can't possibly be resolved through the cure process. How  
25 do you estimate or deal with facts you don't even know exist?

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1                   THE COURT: Okay, but it seems to be the flip side,  
2 Mr. McDonald, is if there is a known claim, then you ought to  
3 do something, agreed?

4                   MR. MCDONALD: And we have. Yes, Your Honor. We have  
5 entered into an arrangement with the debtor. We have  
6 incorporated it into the confirmation order to work out our  
7 differences and our claims through a process to get to the  
8 right cure amount.

9                   THE COURT: Okay.

10                  MR. MCDONALD: Our problem is the modification and  
11 cutoff of an indemnification claim, which is inconsistent with  
12 the Frontier Properties case --

13                  THE COURT: Okay, I --

14                  MR. MCDONALD: -- but also inconsistent with FERC and  
15 PUC jurisdictional requirements.

16                  THE COURT: Okay. I got it.

17                  MR. MCDONALD: These are different contracts, Your  
18 Honor, the bottom line, than what Mr. Karotkin may be trying to  
19 address through this provision. But if the plan contains, and  
20 the confirmation order contains, a blanket provision  
21 disallowing these claims, which it currently does -- which I  
22 would also note is procedurally improper -- because there  
23 hasn't been any claim allowance process at all. It's just a  
24 disallowance of these claims. That is improper, Your Honor.

25                  THE COURT: Okay. I got it. Thank you, Mr. McDonald.

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1 Thank you.

2 MR. MCDONALD: Your Honor, thanks for the opportunity.

3 THE COURT: Okay, thank you.

4 MR. MCDONALD: Thank you.

5 THE COURT: Ms. Parada, go ahead and -- now Mr.  
6 Karotkin, if you want to stay on duty here, while the others  
7 come in or -- I don't need to have you come back and forth on  
8 the same argument.

9 MR. KAROTKIN: I'm happy to stay in.

10 THE COURT: Okay, thanks.

11 So we're going to go to Mr. Lubic next.

12 And Mr. Lubic, state your name for the record, please?

13 MR. LUBIC: Very good, Your Honor. Michael Lubic of K  
14 and L Gates for CN Utility Consulting, Cupertino Electric, and  
15 Wright Tree Service of the West. And we're addressing the  
16 objections that we filed as docket numbers 7330, 7333, and  
17 7336.

18 THE COURT: Okay.

19 MR. LUBIC: So the Court knows that there's lots of  
20 stuff that goes on behind the scenes. And I just wanted to let  
21 you know that there is a large group of vendors, probably about  
22 twenty, that has been loosely coordinating with respect to  
23 issues that are important to them. And one of the salutary  
24 effects of that is then you don't have twenty people asking to  
25 speak on these issues.

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1           My clients are safety and reliability service  
2 providers. They provide critical services that keep the system  
3 operating. They're not large public companies with significant  
4 resources and access to the capital markets. Wright Tree  
5 Service is an employee-owned company based in West Des Moines,  
6 Iowa. So we're a little different than some of the other  
7 creditors and speakers in this case.

8           We thought that there was a settlement put on the  
9 record last Thursday, which resolved all of our issues. And we  
10 waited patiently for language to be filed and language was not  
11 filed. And late yesterday, we were told that the committee and  
12 the debtor couldn't reach an agreement.

13           This is very concerning to us, because the settlement  
14 that was put on the record was very simple. And the language  
15 that could be used to address the settlement should be very  
16 simple to draft. You know, we think it could be a couple of  
17 sentences that resolves all of these issues.

18           And I can tell you that these large vendor group,  
19 having read the plan and having been told that we're  
20 unimpaired, and on the other hand seeing lots and lots of  
21 complicated provisions with complicated legalese, may have  
22 created some ambiguities and some concerns. And I'm not here  
23 to argue about those provisions, but those provisions include  
24 without limitation, because these are scattered throughout the  
25 plan, 4.23, 8.2(e), 10.3, 10.6, 10.7, and buried in the 2,000-

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1 page plan, supplement in the -- what we call the cure notice,  
2 various provisions, including paragraph 13.

3 There's just a lot of stuff there that smart lawyers  
4 can use to make different arguments. And this plan should not  
5 be about who can squeeze their interpretation of what it was  
6 meant to their best interest. We need a plan that is clear and  
7 unambiguous, and we don't want to spend a lot of time and money  
8 and this Court's time fighting about what the plan says and  
9 what it actually meant. So --

10 THE COURT: Did you see the plan from yesterday that  
11 was filed?

12 MR. LUBIC: I did, and I looked at the redline, and it  
13 doesn't address any of these issues --

14 THE COURT: Okay.

15 MR. LUBIC: -- as far as language.

16 THE COURT: Would you like to propose the two-sentence  
17 fix and put something on the docket that Mr. Karotkin and I can  
18 look at this evening or tomorrow?

19 MR. LUBIC: What we would like to do is wait and see  
20 what the committee files. And if we can figure out a more  
21 elegant way to say it, or if our issue is perhaps maybe  
22 different, we will put something on the docket, and it will be  
23 no more than two pages.

24 THE COURT: Well, but make it -- I mean, you got to  
25 act quickly. We're moving on a very fast track here.

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1 MR. LUBIC: Understood, Your Honor.

2 THE COURT: Okay.

3 MR. LUBIC: We will try and file something before  
4 tomorrow morning.

5 THE COURT: Okay, good. Thank you very much, Mr.  
6 Lubic.

7 MR. LUBIC: So -- wait, but we have four issues --

8 THE COURT: Okay.

9 MR. LUBIC: -- that I just want to be clear about  
10 because these are the things that the vendors believe we need  
11 clarity on.

12 Number one, should not be controversial. The  
13 assignment of the claims to the TCC is subject to all defenses  
14 and rights. And the vendors, in defending those claims, can  
15 raise any argument that they could have made against the  
16 debtor. That should not be controversial. That should not be  
17 complicated to draft.

18 Number two, the executory contracts are assumed  
19 without modification. We obviously need to deal with the cure  
20 issue because, as the Court has pointed out in its  
21 hypotheticals, if there is a default, and a creditor wants that  
22 default cured, it needs to file something. My clients filed  
23 something. I'm less concerned about that. But the idea that  
24 we can address these claims as they arise works fine, as long  
25 as the debtor can't say, oh, but the plan actually changed

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1 these things.

2 Number 3, claims not related to assumed contracts need  
3 to be preserved and dealt with in the claim process. Pretty  
4 straightforward. And number 4 --

5 THE COURT: I mean, why do you even raise that? I  
6 mean, why is that even controversial?

7 MR. LUBIC: We do not have transparency into why the  
8 debtor and the committee could not agree on language to resolve  
9 that issue. And we do not understand why it is controversial.

10 THE COURT: Well, I guess I'm -- hold on, there's an  
11 airplane going by. One second. We actually have airplanes  
12 flying today.

13 I guess I don't understand why it even is something  
14 that needs to be dealt with. I mean, if there's a claim that  
15 hasn't been at all involved with an executory contract, it  
16 seems to me that the consequences follow automatically. You  
17 file a claim, or you don't, right?

18 MR. LUBIC: Well, yes, except for all of this language  
19 in the plan that gives rise to arguments that maybe that's not  
20 the case. We just want clarity on the issue.

21 THE COURT: Okay, that --

22 MR. LUBIC: And the --

23 THE COURT: -- that will be included in your two-  
24 sentence fix, or --

25 MR. LUBIC: Absolutely, absolutely. My two sentences

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1 are going to cover all four of these issues.

2 THE COURT: You know, I took Latin in high school, and  
3 the Latin scholars could make one sentence go for about four  
4 pages. So be careful.

5 MR. LUBIC: There may be some numbered clauses in the  
6 sentence. But the sentence is going to start with,  
7 notwithstanding anything to the contrary in the plan and the  
8 confirmation order: one, two, three, four.

9 The fourth issue is carving out from the definition of  
10 fire claim, claims that vendors might have back against PG&E,  
11 arising out of their relationship. Because if you read through  
12 the fire claim definition, it's arguably a fire claim, which  
13 gets tryouts in the trust, which can't possibly be what anyone  
14 wants. But that definitely needs clarification. So those are  
15 our four issues, and we will -- unless we agree completely with  
16 what the UCC files, we'll file some proposed language.

17 THE COURT: Okay. Thank you very much, Mr. Lubic. I  
18 appreciate your comments. All right, we're going to take you  
19 out of the hearing room now. Thank you.

20 And we have Mr. Winsberg next, and then Mr. Heaton.

21 Mr. Winsberg, can you hear me?

22 MR. WINSBERG: Yes. Can you hear me, Your Honor?

23 THE COURT: Yes, I can. Please state your name for  
24 the record.

25 MR. WINSBERG: Thank you -- thank you, Your Honor.

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1 Harris Winsberg from Troutman Sanders on behalf of Osmose  
2 Utilities Services.

3 Your Honor, thank you for the time today. I'll be  
4 brief. Osmose, like several other parties that have spoken,  
5 including Mr. Lubic, have been during contractor of PG&E and is  
6 unimpaired under the plan. I'm not going to repeat the  
7 arguments on the executory contracts and indemnity and  
8 contribution claims. I think those have been already  
9 articulated. I would just urge Your Honor to look at 365 and  
10 the use of the term "default" and not claim it's part of the  
11 cure process.

12 Your Honor, Mr. Lubic, I echo his comments -- and I'll  
13 just be brief on this -- that under the TCC trust, there'll be  
14 a signed rights and causes of action being transferred to the  
15 trust. But the plan is unclear as to the preservation of  
16 vendors' and contractors' ability to assert all rights and  
17 defenses that they would have to any such litigation.

18 And while the debtor, in their brief, as Mr. Bray  
19 talked about earlier today, mentioned that those rights were  
20 being preserved -- and that can be found in their brief on  
21 pages 63 and then 69 -- they didn't point to any provision in  
22 the plan or confirmation order that reflects that. And so now,  
23 we're almost -- we're getting close to the end of confirmation,  
24 and we're concerned that there needs to be specific language in  
25 the confirmation or in the plan that whatever defenses and

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1 rights that people have, those right through against any claims  
2 that may be brought by the trust.

3 And it's not simply an esoteric issue, Your Honor.  
4 For example, in the TCC and the assigned rights and claims, one  
5 of the new things -- and it's at docket number 7711-1 --  
6 according to the --

7 THE COURT: Say the number again, please?

8 MR. WINSBERG: I'm sorry, Your Honor. It's 7711-1.  
9 One of the things that's added in there is potential claims for  
10 fraudulent conveyance. And so I don't understand how you could  
11 have a claim for fraudulent conveyance with the solvent debtor;  
12 but putting that aside, any defendant to a claim like that  
13 would have a right to assert a claim under 502(h). And of  
14 course, if we're unimpaired, that 502(h) claim gets paid in  
15 full.

16 What the plan and confirmation order don't provide --  
17 we have no indication whatsoever whether those rights are being  
18 impaired here. So we're concerned, Your Honor, that -- we want  
19 to make sure there's language that there's a level playing  
20 field and that the defendants have a right, if there is a claim  
21 brought, to assert their rights and defenses against that  
22 litigation.

23 THE COURT: I guess I'm -- of course, I can't keep up  
24 with these moving targets, but how could there be elimination  
25 of a right that could only exist if you turned over a transfer?

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1                   MR. WINSBERG: I agree with you, Honor. It's the  
2 language in the plan. As Mr. Lubic said, there's many  
3 provisions in there. And I would add to his provisions section  
4 10(f) and 10(g) of the plan. There's all these provisions in  
5 there, when coupled together, you give rise to arguments and  
6 careful lawyers making creative arguments that things are being  
7 cut off. And we don't think that should be -- that's  
8 appropriate here.

9                   So what we're asking for isn't -- we don't believe is  
10 controversial. But we've not seen any language from the debtor  
11 or anybody else that would fix the issue. And we heard Your  
12 Honor speak to Mr. Lubic, and we will prepare -- we haven't  
13 seen the UCC's language, but we will certainly prepare language  
14 and work with others that we think could fix it. We think it's  
15 an easy fix. But we just need to make sure those rights are  
16 preserved.

17                  THE COURT: Okay. Well, why don't you take Mr.  
18 Lubic's suggestion -- I mean, do the same, which you've  
19 virtually done. Let's see what the UCC does first, and if not,  
20 maybe you and Mr. Lubic can put your heads together and give me  
21 three sentences to fix it. I mean, I don't -- they seem like  
22 nonissues to me, but I share your concern that we shouldn't  
23 create unnecessary confusion downstream for future generations.

24                  Okay, anything else?

25                  MR. WINSBERG: No, Your Honor. Thank you for your

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1 time today.

2 THE COURT: Thank you for your time, Mr. Winsberg.  
3 Have a good day.

4 MR. WINSBERG: Thank you. You too.

5 THE COURT: All right, Ms. Parada, we're going to get  
6 Mr. Heaton, I believe, and then Mr. Newman.

7 Good afternoon, Mr. Heaton. Nice to see you.

8 MR. HEATON: Good afternoon, Your Honor. Nice to see  
9 you.

10 Geoff Heaton, Duane Morris for Arbormetrics; Asplundh  
11 Construction; Western Environmental Consultants; Utility Tree  
12 Service; and Trees, LLC.

13 Your Honor, my comments fold into the colloquy that  
14 you had with Mr. Lubic a few minutes ago. Our clients filed  
15 objections to assumptions of executory contracts, raising the  
16 same indemnity and contribution issues that we've been  
17 discussing today. However, our clients noted in their  
18 objections that in fact, there are no executory contracts.  
19 They were all terminated pre-petition. The debtors, in  
20 response to our objections, agreed with us and said, yes, we've  
21 reviewed the matter, and we agree, there are no executory  
22 contracts. These were all terminated pre-petition, which we  
23 thought should resolve the matter. However, in the debtor's  
24 confirmation brief, in footnote 22 on page 68, they single out  
25 our clients, and they say that, "upon further review, the

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1 debtors have determined that they agree with these parties that  
2 their contracts were previously terminated and are not  
3 executory. In any case, however, these indemnification rights  
4 would be nullified subject to operation of the Code and state  
5 law as described above."

6 And they have similar comments in the spreadsheet  
7 summarizing plan objections that is attached to their  
8 confirmation brief, which is docket number 7528. So Your  
9 Honor, the plan supplement provides that if a contract gets  
10 assumed, the indemnification rights -- or indemnification  
11 claims are disallowed. However, this suggests to us that the  
12 debtors are taking the position that even if you don't have any  
13 executory contracts with the debtor, your indemnification  
14 claims are still disallowed under the terms of the plan.

15 THE COURT: But Mr. Heaton, wouldn't they be subject  
16 to the discharge if the debtor confirms the plan? 1141, how  
17 could that -- how could a claim that might have existed be  
18 passed through? It would be discharged, wouldn't it? Wait,  
19 now I can't hear you.

20 No. Ms. Parada, can you hear Mr. Heaton?

21 MS. PARADA: No, Your Honor. I cannot hear Mr.  
22 Heaton.

23 THE COURT: Well, see, it's not my end, Mr. Heaton.  
24 It's something at your end that's not -- why don't you click  
25 your mute button and then unclick it now?

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1                   MR. HEATON: Does that work, Your Honor?

2                   THE COURT: It worked.

3                   MR. HEATON: Okay, great.

4                   THE COURT: When in doubt, reboot.

5                   But if there's a contract that is now -- the  
6 counterparty says it's no longer executory, it's terminated; it  
7 would seem to me that's a classic case where if there's some  
8 right that your client has to assert, it should be the subject  
9 of a proof of claim. Am I missing something?

10                  MR. HEATON: No, you're not, Your Honor. We have  
11 filed proofs of claim for those indemnification rights --

12                  THE COURT: Okay.

13                  MR. HEATON: -- contractual and otherwise. However,  
14 this suggest to us that the debtors are saying, your proofs of  
15 claim will be disallowed under the terms of the plan.

16                  Now, this folds into what you discussed with Mr.  
17 Lubic. What's the issue here? Well, we agree, but it suggests  
18 to -- we don't want to be in a position where the debtors say,  
19 well, look here, your proofs of claim are disallowed.

20                  Last week, Mr. Karotkin, when describing the proposed  
21 resolution with the OCC, I believe he said that they had agreed  
22 to terms essentially if no contracts were being assumed, the  
23 parties reserved all rights. And I believe Mr. Lubic said  
24 essentially the same thing in part 3 of what he discussed with  
25 you. And we agree with Mr. Lubic that that should be the case.

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1 And so --

2 THE COURT: Well, why wouldn't a fix be something as  
3 simple as, a contract that was terminated pre-petition will be  
4 the subject of the claims allowance process? It's not deemed  
5 allowed -- I mean disallowed, because that's of no meaning at  
6 all. If you file a claim, it's deemed allowed unless objected  
7 to.

8 MR. HEATON: Yeah, we agree totally, Your Honor. We  
9 just don't want to have someone pull an aha, gotcha after the  
10 fact.

11 THE COURT: Okay.

12 MR. HEATON: This language that I quoted concerned us.  
13 This folds into what Mr. Lubic said, and we agree with Mr.  
14 Lubic's proposed language.

15 THE COURT: Okay. Well, Mr. Heaton, I don't want to  
16 make this sound like we got to go back and forth every time Mr.  
17 Karotkin wants to be heard. My suggestion will be that if this  
18 problem gets swept up in whatever the OCC works out, fine. If  
19 not, you can join forces with Mr. Lubic and get something that  
20 just states the obvious. It seems to me it states the law.  
21 But I share with you, you shouldn't be confronted with a  
22 contrary provision in a plan. So --

23 MR. HEATON: Thank you, Your Honor.

24 THE COURT: -- I think you're in a good position to be  
25 able to protect your clients' interests.

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1               Okay? Anything further today?

2               MR. HEATON: That's it.

3               THE COURT: All right.

4               MR. HEATON: Thank you very much, Your Honor.

5               THE COURT: Thank you. Thank you, Mr. Heaton.

6               And Mr. Newman will be the last person that's going to  
7 speak on this issue.

8               Mr. Newman, we're bringing you into the room here, so  
9 your hand goes down. Mr. Newman, good afternoon. Can you hear  
10 me?

11              MR. NEWMAN: I can, Your Honor. Can you hear me?

12              THE COURT: Yes. Please state your name for the  
13 record.

14              MR. NEWMAN: Thank you, Your Honor. Sam Newman  
15 representing McKinsey & Company, regarding our objection filed  
16 at docket 7334 and 7349.

17              THE COURT: All right.

18              MR. NEWMAN: Your Honor, I'll be brief as possible. I  
19 think the comments you made in the last colloquy clear up one  
20 of our two issues with respect to the allowing process. And  
21 that is not your intention that anything in the plan would  
22 affect the allowance of unsecured claims, whether for rejection  
23 or otherwise, simply because they relate to indemnification or  
24 contribution. And that will be subject to a subsequent claims  
25 allowance process with all rights reserved. We thought that

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1 was the intention of the settlement on Friday, and we think  
2 that that's the appropriate way to address any issues with  
3 respect to our claim, given that our claim is to be treated as  
4 unimpaired, as all unsecured creditors.

5 We would wait for the UCC's proposed language, and we  
6 will cooperate with the other vendors, to the extent we think  
7 additional --

8 THE COURT: Okay.

9 MR. NEWMAN: -- information is --

10 THE COURT: Again, let me -- and let me use you --  
11 your presence as a way just to address a comment to you, but  
12 really to a number of other lawyers. I rely on people giving  
13 me the straight scoop, and when someone several days ago said,  
14 we got that resolved, and a stipulation is stated in this kind  
15 of a colloquy, I simply can't keep track of it. So I'm  
16 assuming it'll be memorialized in some fashion. And you and  
17 the other counsel who just spoke are the guardians when this  
18 thing gets close to a final order. But my expectation is --  
19 and Mr. Karotkin and his side will memorialize, well, all of  
20 these things that have been worked out in some global fashion  
21 that's consistent with everybody's interest.

22 You had two points, though. What was the other one?

23 MR. NEWMAN: Yes, the other issue -- and I wasn't sure  
24 if it was unclear in some of the comments and colloquies, but I  
25 just wanted to make this clear for the record that our view is

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1 that with respect to the requirement to state your cure, under  
2 365(a)(1) -- I'm sorry, (b)(1)(A) -- you have to, at the time  
3 of assumption, cure default. The debtor's obligation is to  
4 cure defaults, not to cure all claims. And the issue that I  
5 think has been somewhat aggregated inappropriately is the  
6 question of whether there's a default at the time or whether  
7 you somehow have to state all potential claims that may flow  
8 from the facts as they then exist.

9 So with the particular example of indemnification  
10 claims, if there is no present default or failure to pay on  
11 behalf of the debtor, then the default that needs to be cured  
12 is zero, but that doesn't obviate the fact that under  
13 355(b)(1)(c), the debtor still has to adequately assure that it  
14 will make future performance if and when that performance is  
15 due.

16 So in the example of the Montali-Karotkin lease, at  
17 the July assumption date, one has to pay the June rent if it's  
18 not been paid as a cure but doesn't have to pay the August  
19 rent.

20 THE COURT: Well, no. But on the other hand, if  
21 Mr. -- who should we have in bankruptcy? I think we'll have  
22 Mr. Bray in bankruptcy. So if Mr. Bray says, I'm going to pay  
23 my future obligations to Mr. Karotkin, and Montali, the  
24 guarantor says, wait a minute. There's no way you're going to  
25 be able to do it. Then you put in issue the ability to perform

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1 in the future. That's a defense that I think you have to  
2 make -- or an objection you have to make for a contract being  
3 assumed, don't you agree?

4 MR. NEWMAN: I don't agree. I think, Your Honor, that  
5 if one wishes to object on the basis of whether or not the  
6 debtor can adequately assure future performance, whether  
7 they're able to perform, that's an objection that needs to be  
8 made --

9 THE COURT: Right.

10 MR. NEWMAN: -- at the time.

11 THE COURT: Right.

12 MR. NEWMAN: And then all then-outstanding defaults  
13 have to be cured. So if you look at the example of the Arriva  
14 Pharmaceutical case that Mr. Karotkin cites --

15 THE COURT: I'm sorry, which case? Which case?

16 MR. NEWMAN: Arriva Pharmaceuticals. That was the  
17 case that Mr. Karotkin referred to earlier.

18 THE COURT: Okay. I don't know the case, but I  
19 remember he said something. But what about it? I mean,  
20 what --

21 MR. NEWMAN: The point in that case is that the debtor  
22 had breached the agreement. In that case, it was an IP license  
23 that had assigned certain intellectual property to itself in  
24 violation of the license. And the court determined that that  
25 breach had occurred pre-assumption, and therefore, any cure

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1 relating to that breach had to be asserted at the time.

2 THE COURT: Right.

3 MR. NEWMAN: And we agree with that. My point is if  
4 the conduct in question has not given rise to a default, there  
5 is nothing in §365 that requires any particular provision to be  
6 made for future performance. Defaults that exist on the  
7 assumption date have to be cured. That's 365(b)(1)(A). And  
8 adequate assurance has to be made for future performance under  
9 (b)(1)(C) if the debtor has made a prove-up already of their  
10 ability to adequately assure future performance. It's not a  
11 question of whether or not they're willing to perform in the  
12 future. It's that they can. And that's not what's at issue  
13 here. By pointing to the contract --

14 THE COURT: But you still have to assert something if  
15 you question the assuming debtor's ability to perform in the  
16 future.

17 MR. NEWMAN: That's correct. However, all we have to  
18 do is point at the contract to identify what the debtor's  
19 obligations are. And the debtor has already said that they  
20 have adequately assured future performance. And that's not in  
21 dispute. Their assurance of future performance is their  
22 balance sheet and their business plan. They intend to perform  
23 their obligations prospectively.

24 THE COURT: Well, what's a --

25 MR. NEWMAN: This is --

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1                   THE COURT: -- go ahead, you finish. Finish your  
2 point.

3                   MR. NEWMAN: -- this is a question of what's being  
4 raised by the language in the supplement. And when you talk  
5 about an easy fix, there's really one line in the supplement  
6 that puts this at issue today, where they say that any assumed  
7 contract does not include indemnification provisions. It  
8 doesn't say that you have to cure or state the cure of  
9 unperformed indemnification provisions. And it doesn't say  
10 that the debtor is not able to perform in the future its  
11 assumption obligations. All it says is that for no reason tied  
12 to any case law, that those particular provisions, as you  
13 discussed earlier, are sliced out with the scissors. And  
14 that's what we're arguing is inappropriate.

15                  THE COURT: So what's --

16                  MR. NEWMAN: We have to cure --

17                  THE COURT: -- the --

18                  MR. NEWMAN: -- defaults today --

19                  THE COURT: -- what paragraph --

20                  MR. NEWMAN: -- and the debtor's already -- sorry, go  
21 ahead, Your Honor.

22                  THE COURT: -- what paragraph in the supplement --

23                  MR. NEWMAN: I believe it --

24                  THE COURT: -- where do I find --

25                  MR. NEWMAN: -- I believe paragraph 13.

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1                   THE COURT: 13. Yeah, that's the -- I think 13's the  
2 unlucky number. That's been cited before.

3                   So let's test it. So if -- I'm going to go back  
4 because leases are so easy. So you're the landlord, and I'm  
5 the tenant, and I owe you one month's rent, but I'm on shaky  
6 ground. And I make my motion to assume, and I say my cure is  
7 one month's rent, and I know I can perform going forward. Your  
8 response is, no, your default is two month's rent, and you are  
9 financially impaired, and you won't be able to perform going  
10 forward. You have to raise both of those issues, right? And  
11 if you understated your default or didn't state your challenge  
12 to my ability to perform in the future, you would be stuck with  
13 it, right?

14                  MR. NEWMAN: That is correct. However, Your Honor,  
15 under --

16                  THE COURT: But what if I said, and also, I'm going to  
17 perform all my indemnity obligations? Don't you --

18                  MR. NEWMAN: So --

19                  THE COURT: -- we'll have to put that at issue, too?

20                  MR. NEWMAN: -- so Your Honor, I don't think that I  
21 have to put -- I don't have to copy into my (break in audio) --

22                  THE COURT: Sorry, you're -- I could hear you, and  
23 then I lost you again. Maybe it's my end.

24                  MR. NEWMAN: I don't think there's any case law to  
25 suggest that I have to specifically put every provision of the

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1 contract into my (indiscernible).

2 THE COURT: Hold on, Mr. Newman.

3 Ms. Parada, are you hearing him clearly, or --

4 MS. PARADA: No, he's cutting in and out.

5 THE COURT: Yeah.

6 THE COURT: You're the culprit --

7 MS. PARADA: It's faint.

8 THE COURT: -- again, Mr. Newman. I'm not. Your  
9 voice is cutting in and out. So just say it again, if you can.  
10 Maybe you're moving away from the microphone. I'm not sure.

11 MR. NEWMAN: Sorry, I'll try. Can you hear me now?

12 THE COURT: Sort of.

13 MR. NEWMAN: So my point is simply --

14 THE COURT: Yeah, your voice comes in and comes out.  
15 So I don't know whether it's your connection or your  
16 microphone. I don't want to lose the point, but --

17 Mr. Karotkin, are you having trouble hearing him also?

18 MR. KAROTKIN: Yes, sir.

19 THE COURT: Yeah, so it's coming from your end. Well,  
20 let's see. Why don't you do what I did through the other  
21 counsel? Turn off your mute -- mute your microphone and then  
22 unmute it, and see if that -- now unmute it. Now say  
23 something.

24 MR. NEWMAN: Is that any better, Your Honor?

25 THE COURT: Yeah.

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1 MR. NEWMAN: (Indiscernible)?

2 THE COURT: Sort of.

3 MR. NEWMAN: I will conclude very briefly.

4 THE COURT: No.

5 MR. NEWMAN: (Indiscernible).

6 THE COURT: No, it's not working.

7 MR. NEWMAN: Give me one second, Your Honor. I tried  
8 to mute the video and the audio.

9 THE COURT: No, it's the same. It's the same, it's in  
10 and out. Let's --

11 MR. NEWMAN: Is it any better if I'm audio only?

12 THE COURT: No, it sounds like you're underwater. Can  
13 you hear me now, Mr. Newman?

14 MR. NEWMAN: I can hear you, Your Honor.

15 THE COURT: No, same problem. Okay, turn your video  
16 back on. I'm afraid I can't just keep you on hold here.

17 MR. NEWMAN: No, I understand, Your Honor.

18 THE COURT: Why don't you see if you can succinctly  
19 restate it in the form that you're trying to make and put  
20 something on the docket? I'll do my best to review it. I  
21 mean, I want to get the point. I don't -- and you know, I  
22 can -- unfortunately, we just don't have the luxury of  
23 continuing this hearing any longer. Try one more time. Let's  
24 see what happens.

25 MR. NEWMAN: Okay. So my only point, Your Honor, was

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1 that we don't have to put every aspect of the contract in our  
2 adequate assurance objection. The debtor is assuring us that  
3 they can perform all aspects of the contract, and that is not  
4 at issue. And all we should have to put out today is our  
5 objections to the cure amount, which has been done. And  
6 nothing in the plan should impose a higher standard.

7 THE COURT: Okay, I got it.

8 MR. KAROTKIN: Your Honor?

9 THE COURT: Yes, sir? Mr. Karotkin?

10 MR. KAROTKIN: I thought I heard somebody say -- and I  
11 didn't hear it clearly -- that -- maybe it was Mr. Newman --  
12 that certain things have been worked out, and I'm not sure I  
13 know what he was referring to.

14 MR. NEWMAN: No, Your Honor, I don't think anything  
15 has been worked out. There was a proposed settlement discussed  
16 on Friday that I think has not materialized.

17 MR. KAROTKIN: Okay.

18 MR. NEWMAN: We were simply trying --

19 MR. KAROTKIN: Sorry to interrupt.

20 MR. NEWMAN: -- no, we were simply trying to use that  
21 as a framework to indicate what I think a fair result is, that  
22 objections to claims should be reserved with all rights to a  
23 subsequent proceeding.

24 MR. KAROTKIN: Thank you. I'm sorry to interrupt.

25 THE COURT: Okay. On that note --

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1                   MR. NEWMAN: So just concluding briefly, Your Honor,  
2 as it appears that you can hear me a bit better, we think that  
3 the cure amounts have been put at issue and have been stated.  
4 And other than that, all of the obligations under the contract  
5 should have to be performed in the future. And that's the  
6 point of what I think is the conflation of the two issues. We  
7 don't have to state today each specific provision of the  
8 contract that needs to be reformed or the amount that we think  
9 in the future they'll be unable to perform. They have assured  
10 us they can adequately perform their obligations under assumed  
11 contracts, and they should have to do that.

12                  THE COURT: Okay, got it. Thank you very much, Mr.  
13 Newman.

14                  MR. NEWMAN: Thank you, Your Honor. Sorry for the  
15 technical difficulty.

16                  THE COURT: No, we got it straightened out.

17                  Okay, one second, Mr. Karotkin. All right, by my  
18 calculation, we're down to -- well, Mr. Maltin (phonetic). Mr.  
19 Maltin did not re-raise his hand, so I'm assuming he doesn't  
20 want to add anything at this point.

21                  Mr. Maltin, I'll say once again, if you're out there,  
22 and you want to weigh in, you're welcome. Okay, you're not.

23                  Mr. Karotkin, by my calculation, we're ready for Mr.  
24 Bennett or Johnston, or both, and then you, right?

25                  MR. KAROTKIN: I think so, sir. Yes, sir.

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1                   THE COURT: Okay. Ms. Parada, let's bring Mr. Bennett  
2 and Mr. Johnson in, and they can tell me how they want to  
3 divide up their time.

4                   I see Mr. Bennett. Good afternoon, Mr. Bennett.  
5 Unmute your microphone.

6                   MR. BENNETT: Good afternoon, Your Honor.

7                   THE COURT: You've got unmute yourself. All right.  
8 Would you state your name for the record.

9                   MR. BENNETT: Bruce Bennett, Jones Day, for plan  
10 proponents.

11                  THE COURT: And Mr. Johnston, same?

12                  MR. JOHNSTON: Good afternoon, Your Honor.

13                  Jim Johnston of Jones Day on behalf of the shareholder  
14 proponents.

15                  THE COURT: Okay. One second. I'm going to turn your  
16 volume up a little bit. Wait a minute. Not yet.

17                  Okay. Who is going first?

18                  MR. JOHNSTON: I think I have the honors, Your Honor.

19                  THE COURT: Okay.

20                  MR. JOHNSTON: And I'm going to tackle the response to  
21 PERA, and the Class 10A-II claim. And Your Honor, after what  
22 you heard on Friday, which seems like a lot more than a few  
23 days ago, but what Mr. Behlmann and Mr. Etkin said really needs  
24 a great deal of correcting, so I'm going to try and do that in  
25 my time here today. And I'll start just by clearing out some

PG&E Corporation and Pacific Gas and Electric Company  
1 of the underbrush, starting with PERA's actual claim.

2 Mr. Behlmann conceded that PERA's latest proof of  
3 claim, and the only one it filed in connection with the  
4 extended bar date procedures that Your Honor specifically  
5 crafted to address Class 10A-II, asserts a claim in the amount  
6 of 119,134 dollars. That claim was signed by an actual PERA  
7 representative, and it liquidates the alleged damages to the  
8 penny.

9 Mr. Behlmann's right that PERA's lawyers, I think his  
10 firm, had filed a proof of claim more than six months earlier,  
11 and that lawyer claim was marked unliquidated. One would think  
12 that the clients, PERA, knows its actual damages better than  
13 its lawyers, and that PERA has now liquidated its claim in the  
14 amount of 119,000 dollars, and so I think it's fair to assume  
15 that the second claim signed by the client, and not the lawyer,  
16 with a statement of liquidated damages supersedes the first.

17 THE COURT: Can you give me the claim numbers?

18 MR. JOHNSTON: Yes, the most -- the client claim, the  
19 most -- the latest claim is proof of claim 101691.

20 THE COURT: Okay.

21 MR. JOHNSTON: The earlier claim asserted against PG&E  
22 Corporation is proof of claim 71345, and there's an identical  
23 claim to that one asserted against the utility at 69105.

24 THE COURT: Okay. And 101691, by PERA, who is that  
25 asserted against?

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1                   MR. JOHNSTON: That is asserted against PG&E  
2 Corporation.

3                   Regardless of that, one thing we do know for sure is  
4 that Mr. Behlmann's assertion of twenty-two some-odd million  
5 dollars in PERA losses is unequivocally false. Mr. Behlmann  
6 cited the schedule attached to the earlier unliquidated lawyer  
7 proof of claim which shows purchases of PG&E stock during the  
8 class period in the neighborhood of twenty-two million dollars,  
9 and he said voila, PERA has a twenty-two million dollar claim.

10                  But Mr. Behlmann forgot to mention that that very same  
11 schedule discloses more than seventeen million dollars in  
12 proceeds from the sale of PG&E stock. You can't assert a  
13 twenty-two million dollar fraud claim related to twenty-two  
14 million dollars in stock purchases when you wound up selling  
15 the stock for seventeen million dollars.

16                  This isn't, quote/unquote, manipulating the optics as  
17 Mr. Etkin called it. It's simply a fact that this is an  
18 inflated, and we think largely, if not, entirely bogus claim.  
19 And it's simply a fact that as we discussed on Wednesday, PERA  
20 is the one and only Class 10A-II claimant who has objected; no  
21 one else.

22                  Okay. Second point is the issue of PERA's alleged  
23 claim against the utility. Mr. Behlmann said that PERA needs  
24 the right to assert claims against the utility because the  
25 utility because the two estates have not been substantively

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1 consolidated. That's true, but when you look at the PERA  
2 complaint, you'll see that there's not a single claim asserted  
3 solely against the utility. In fact, PERA's complaint alleges  
4 that the utility is an alter ego of PG&E Corporation, that's  
5 the fourth cause of action in the complaint, and PERA actually  
6 alleges that PG&E Corporation and the utility, are one in the  
7 same.

8 To quote paragraph 43 of the complaint which is  
9 Debtors' Exhibit 82, "The utility effective acts as an alter  
10 ego of PG&E." Then it goes onto give some allegations that  
11 supposedly support that, and then it says, "Accordingly, this  
12 complaint refers to the utility and PG&E interchangeably, as  
13 'PG&E or the company, unless otherwise specified.'"

14 So it's richly ironic that PERA now objects to the  
15 plan due to its alleged failure to treat claims against the  
16 utility.

17 The plan just reflects what PERA itself has alleged --

18 THE COURT: Mr. Johnston, you opt for the solution  
19 there under the Circuit's Del Biaggio decision, and we treat  
20 them as the parent anyway, right?

21 MR. JOHNSTON: That is correct.

22 THE COURT: Okay. Well doesn't -- if I buy that  
23 argument, doesn't that moot this whole discussion?

24 MR. JOHNSTON: I think it does, yeah.

25 THE COURT: Okay.

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1                   MR. JOHNSTON: The point is that the failure to  
2 classify and treat a claim against a utility is not a basis for  
3 denying confirmation of the plan.

4                   THE COURT: Okay.

5                   MR. JOHNSTON: Right.

6                   THE COURT: Well, I think both of the counsel on  
7 Friday made the point that they weren't urging denial of  
8 confirmation. I mean, some objectors are urging denial of  
9 confirmation; they are not. So I fully perceive that to be a  
10 way of saying, if I am otherwise satisfied that the plan should  
11 be confirmed, then I put PERA in the category of many others  
12 that there has to be a way to preserve their position or fix it  
13 in the plan or something. I mean, something has to happen.

14                  So you agree with that, don't you, that that -- if the  
15 plan gets confirmed, you still have to deal with PERA one way  
16 or the other?

17                  MR. JOHNSTON: Yes and no, Your Honor. If the plan  
18 gets confirmed, the plan will specify the treatment of PERA's  
19 claim. We will have to deal with the liquidation of those  
20 claims and allowance of those claims, if at all.

21                  THE COURT: Right.

22                  MR. JOHNSTON: In that context, we will be dealing  
23 with them.

24                  THE COURT: Right, right, I understand, and whether  
25 it's your formula, or their formula, or some other formula, or

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1 something, it's something. Something has to be done. Okay. I  
2 think we're on the same page here.

3 MR. JOHNSTON: Okay. So let's talk about the formula,  
4 and I think the best place to start is with PERA's own slides,  
5 which are very revealing. So I've got them. If you don't  
6 mind, I will pull them up on the screen and we can go through a  
7 couple of them.

8 THE COURT: Oh, you have -- Ms. Parada, we have to  
9 let -- no, he shares -- we do have to let him share? No, he  
10 shares. There we go. Okay. All right.

11 MR. JOHNSTON: Okay. Can you see the demonstrative up  
12 on the screen, Your Honor?

13 THE COURT: I know it well. I memorized it.

14 MR. JOHNSTON: Okay. So this is slide 10 from PERA,  
15 and I think the point Mr. Behlmann was trying to make is that  
16 there's some sort of inconsistency in using a petition date  
17 claim amount, an outstanding share amount as of the petition  
18 date with a market capitalization as of an earlier date,  
19 October 12, 2017. And I guess that's why they put October 12  
20 in the area red fonts there.

21 THE COURT: Well, I think they --

22 MR. JOHNSTON: As --

23 THE COURT: -- put it in red because that was the date  
24 you gave them.

25 MR. JOHNSTON: Correct, but notice that's different

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1 than the rest of the fonts on the slide, and I'll get to  
2 October 12th in a minute.

I submit, Your Honor, and I think you picked up on  
3 this on Friday, this slide is highly misleading. The allowed  
4 claim amount is whatever losses can be proven. That claim may  
5 be allowed as of the petition date, but the calculation of  
6 those losses is not a petition date issue. PERA's alleged  
7 losses were incurred, if at all, well before the petition date.  
8

THE COURT: I think Mr. Behlmann conceded that point  
9 in the late part of the argument --  
10

MR. JOHNSTON: I --  
11

THE COURT: -- because he was going around with all  
12 the other dates and I said, what about you giving up on the  
13 petition date, he said, yes; I mean, words to that effect.  
14

MR. JOHNSTON: He conceded it may be marginally  
15 because then he pivoted to a date that would was the end of the  
16 class period several months earlier, and --  
17

THE COURT: Well, that's because he didn't like your  
18 date.  
19

MR. JOHNSTON: Correct.  
20

THE COURT: He liked his date a lot better than your  
21 date, and the petition date was the least appealing. But  
22 anyway, I understand your point.  
23

MR. JOHNSTON: Yes. And I'm here to tell you why his  
24 date, no matter how it moves, is inappropriate.  
25

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1                   So let's talk about the October 12th date. That is  
2 when PERA's losses allegedly were occurred. In the complaint,  
3 the first loss is alleged to have occurred sometime during the  
4 day on October 12, 2017. We didn't pick that date, Your Honor.  
5 It's not "reverse engineered" to use Mr. Behlmann's term. PERA  
6 chose the date and the quotes from the complaint that I read  
7 you on Wednesday make that crystal clear.

8                   So each of the components of the plan formula are  
9 consistent. They're consistent with the incurrence of losses  
10 as of October 12, 2017. And I explained on Wednesday why,  
11 given the allegation of first disclosure on October 12, 2017,  
12 that's the most relevant and logical date for determining  
13 sharing between shareholders, and fraud claimants.

14                  So PERA tried to rebut that logic by showing a series  
15 of slides starting on slide 13, which I think I can flip  
16 through here, you see they say well, there were a lot of other  
17 disclosures, and there were nine separate disclosures, so nine  
18 separate frauds occurred over the course of the next thirteen  
19 months.

20                  Your Honor, I submit to you that that is absurd, and I  
21 don't use that word lightly, to suggest that there were nine  
22 different frauds. There's one alleged fraud. The alleged  
23 failure to disclose what everyone already knew; that PG&E might  
24 start a fire, and be strictly liable for the resulting damages.  
25 The nine, quote/unquote, cleansing disclosures all relate to

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1 that one alleged fraud.

2 You heard Mr. Behlmann talk about an allegation of the  
3 fraud being unwound over time. That is a concept that's  
4 sometimes used in connection with accounting fraud. If a  
5 company withdraws its financial statements as inaccurate, it  
6 may take a while for it to generate new, accurate statements,  
7 and the issuer might go onto correct misstatements one by one,  
8 resulting in separate corrections, and separate dates for  
9 measuring losses. That's not what happened here. You have  
10 one, and only one, alleged fraud.

11 But the entire premise of the series of slides you  
12 were shown is that there were nine alleged frauds, and that  
13 every dollar of the decline and stock price from October 12,  
14 2017, to November 15, 2018, is 100 percent attributable to  
15 those alleged frauds.

16 That ignores both the law, and reality. The Federal  
17 Securities Laws do not presume that every dollar of loss, or  
18 stock price decline is attributable to the supposed fraud.  
19 That's why there's the requirement of loss causation, and it's  
20 particularly important here where you have a lengthy class  
21 period, and numerous alleged misstatements, and supposed  
22 corrective disclosures. By arguing that every dollar of  
23 decline in PG&E stock price over the course of 399 days is  
24 attributable to this supposed fraud, PERA's essentially arguing  
25 that the securities laws give it some kind of investor

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1 insurance.

2 PERA's various charts in theory ignore everything that  
3 was happening during those 399 days. They ignore the CPUC's  
4 denial of inverse condemnation cost recovery to San Diego Gas &  
5 Electric, and the perceived impacts it had on PG&E's exposure  
6 for wildfire loss. They ignore the ignition of the North Bay  
7 Fires, and ignore the Camp Fire.

8 Let's look at slide -- another one of PERA's slide,  
9 slide 23.

10 THE COURT: Wait, back up. Wasn't the Camp Fire right  
11 when the last period ends -- no, the Camp Fire was a few  
12 days -- excuse me, the Camp Fire was a few days before the  
13 close of the class period; isn't that true?

14 MR. JOHNSTON: That's correct. That is --

15 THE COURT: Okay.

16 MR. JOHNSTON: -- what this slide that I'm showing you  
17 right now --

18 THE COURT: Yes.

19 MR. JOHNSTON: -- showed.

20 THE COURT: Okay.

21 MR. JOHNSTON: You see that big drop right before the  
22 end of the class period, that's on -- the class period ended on  
23 November 15. On November 8th, the class period --

24 THE COURT: But I thought --

25 MR. JOHNSTON: -- sorry, the Camp Fire was ignited.

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1                   THE COURT: -- I thought it was November 8th, and if  
2 the class period ends, November 8th. Okay.

3                   MR. JOHNSTON: And PERA would have you hang every  
4 single dollar of that stock price decline on an alleged  
5 fraudulent failure to disclose that PG&E might be liable for  
6 the fire.

7                   THE COURT: Well, you make a good point, but what  
8 about somebody who didn't know anything about the history, who  
9 bought the stock, or bought the bonds, two weeks before the  
10 Camp Fire?

11                  MR. JOHNSTON: That person is charged with  
12 constructive knowledge, at least, of the entire public record  
13 up to that date.

14                  THE COURT: Oh, maybe so, but that goes to how that  
15 person maybe doesn't have a claim at all, right?

16                  MR. JOHNSTON: That's correct.

17                  THE COURT: I didn't --

18                  MR. JOHNSTON: And as I will get to, it goes to why  
19 that person can't possibly, if that person can prove a claim,  
20 be able to share in a market capitalization of PG&E that  
21 diminished five or six times over from the time that this  
22 alleged fraud was first disclosed.

23                  THE COURT: No, I understand. I agree with you. I  
24 mean, I understand your point.

25                  MR. JOHNSTON: And Your Honor, I think your

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1 hypothetical on Friday hit the nail on the head. If someone  
2 holding shares on October 12, 2017, suffered its alleged loss  
3 on that date, those losses didn't somehow increase over time,  
4 if the shareholder decided to hold the shares, and roll the  
5 dice, as I think you put it.

6 So I think the best way to absorb that is by going  
7 back a few slides, and this is PERA's -- let me just adjust the  
8 sides here. So this is what PERA says is the net impact of the  
9 nine corrective disclosures over time. And I'm glad they got  
10 it down on paper because I think it says something astonishing.  
11 On this slide, PERA claims that the alleged fraud that PERA  
12 admits was at least partially revealed on October 12, 2017,  
13 grew to be roughly 28.8 billion dollars in the thirteen months  
14 after October 12. Everything but that blue slice in the upper  
15 left-hand corner is alleged to be fraud. That's more than  
16 eighty percent of PG&E's market capitalization on the date of  
17 the first disclosure.

18 And more importantly for today's purposes, it's four  
19 times the size of the petition date capitalization that PERA  
20 itself had said should be the baseline for determining sharing  
21 under the plan. PERA wants to shove 28.8 billion dollars of  
22 fraud claim into a 7.3 billion dollar pot. There's no  
23 consistent, intellectually coherent basis for doing that, and I  
24 think Mr. Behlmann and Mr. Etkin effectively admitted as much.

25 You had the discussion with Mr. Etkin about his pivot.

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1 He simply picked a new capitalization date for his formula on  
2 the fly when he realized that you weren't going to go for the  
3 petition date capitalization. That wasn't in his brief, and  
4 it's not reflective of any logical reasoned approach. All that  
5 the pivot reveals is an intellectually bankrupt position, and  
6 PERA, I submit, has no coherent theory at all.

7 So Mr. Etkin then pivoted again and he said wow, we  
8 really should be mediating this, and he claimed to have been  
9 ignored in prior discussions. Your Honor, that's astonishing.  
10 There's an ongoing multi-month mediation going on with PERA  
11 about these claims. I don't know how Mr. Etkin can say there's  
12 been no effort to engage. You know, those were his words, and  
13 they're just false, given the pending mediation.

14 So before I move off the subject of the formula, let  
15 me just spend a few minutes on what the plan actually does.  
16 Unlike what PERA suggested, the plan formula has a coherent  
17 consistent basis, and in a nutshell, that is to give the fraud  
18 claimants what they thought they were getting when they  
19 invested.

20 Mr. Behlmann needs the first page of our demonstrative  
21 to set up a strawman, and I'll flip back to that, and this will  
22 be the last time we look at these charts. Right here, this was  
23 actually our demonstrative that he put up on the screen, and he  
24 said look at that -- he said, we're trying to limit the  
25 entirety of the fraud claim to the orange wedge, and that's

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1 what he juxtaposed against his 28.2 billion dollars in fraud,  
2 and he said that's unfair, but that's not what the plan does.  
3 There's a reason why we labeled that particular orange wedge  
4 hypothetical.

5 All that chart shows is the market losses over two  
6 days in October 2017 after the disclosure of the alleged fraud.  
7 At the end of the day, the fraud claims are whatever they will  
8 be, if anything at all, and whatever they are, they're  
9 accounted in our plan formula. But then Mr. Behlmann said  
10 well, gotcha, the Ninth Circuit holds that benefit of the  
11 bargain is not the measure of the securities fraud claim. So  
12 our plan formula which seeks to give fraud claimants what they  
13 thought they were getting doesn't work. I submit, Your Honor,  
14 that's misdirection.

15 As I argued on Wednesday, the measure of damages is  
16 relevant to the determination of the allowed amounts of PERA's  
17 claim. That's the numerator in our formula. That amount will  
18 be whatever it will be under governing law, if PERA is able to  
19 prove its claim.

20 The question we're talking about here is something  
21 entirely different. We're figuring out how that claim, if and  
22 when it's allowed, gets treated under the plan, and so PERA is  
23 just conflating claim allowance with treatment.

24 On the numerator, Your Honor, we had a dispute  
25 regarding the reduction in claim amount for insurance received

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1 by a claimant. To respond to the question that you asked that  
2 you asked at the beginning of the day on Friday, the plan is  
3 not distributing insurance proceeds on account of the claim.  
4 What the plan does is it deducts a particular claimant's claim  
5 amount and it recognizes that the claim is smaller because of  
6 the payment of insurance from the estate.

7 I think, at the end of the day, Mr. Behlmann's  
8 proposed fix to the plan language which concedes that a  
9 deduction is appropriate in some circumstances, proves that  
10 there's no Ivanhoe issue here, proves that there's no  
11 collateral source issue. The payment is from insurance that's  
12 otherwise available to the debtors, and any payment from  
13 insurance is a reduction in assets available to the estate.

14 THE COURT: Why isn't it Ivanhoe because remember in  
15 Ivanhoe, you have two wrongdoers. In this case allegedly, you  
16 have two wrongdoers, the corporate entity, and the individual  
17 whose insurer has to pay. So why isn't that Ivanhoe in spades?

18 MR. JOHNSTON: Because Ivanhoe, I think the key of  
19 Ivanhoe is that there's two sources of payments, and the point  
20 to be made here is that insurance that's property of the estate  
21 is one source of payment.

22 THE COURT: Oh, well, then, Mr. Johnston --

23 MR. JOHNSTON: It's the same as the estate.

24 THE COURT: -- Mr. Johnston, if insurance is property  
25 of the estate, this is all a complete red herring because the

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1 only way you ever have to worry about someone being paid from  
2 some other source is when you wiped out the entire insurance  
3 tally B and C, and left the debtor insolvent because you  
4 never --

5 MR. JOHNSTON: It --

6 THE COURT: -- you never have to tap the insurance  
7 funds that protects non-debtors.

8 MR. JOHNSTON: And Your Honor, we are prepared to  
9 concede that any payment from the Side A coverage should not be  
10 deducted from the claim amount.

11 THE COURT: Well, I mean, that's the end of the story  
12 on that issue, isn't it? I mean --

13 MR. JOHNSTON: I think so.

14 THE COURT: -- you didn't --

15 MR. JOHNSTON: The PERA objection was --

16 THE COURT: -- seen it the other day.

17 MR. JOHNSTON: -- PERA had objected to the deduction  
18 at large. We will make a modification that says that insurance  
19 proceeds received solely from the Side A part of the coverage,  
20 which is only available when all the shared coverage is  
21 exhausted, and there's a non-indemnified loss --

22 THE COURT: Well, you just --

23 MR. JOHNSTON: -- that will not be deducted.

24 THE COURT: -- you've just argued yourself, and  
25 conceded yourself out of the Ivanhoe trap. So I -- we're on

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1 the same page. So what do we do -- and let's go -- I  
2 appreciate that you did it, you confirmed it, cleared it. I  
3 thought it through a lot since their argument and I couldn't  
4 reach my -- any other conclusion, and you made my life easier  
5 by conceding the point.

6           But why is your October 12th date the right date for  
7 someone who invested later? And if your response is, well  
8 later, we'll get rid of his claim, and I say, then it doesn't  
9 matter. In other words, why isn't it more appropriate to do  
10 away with a formula until we know what the allowances are?  
11 Because my guess is that some poor guy that bought 1,000  
12 dollars' worth of PG&E stock the day before the Camp Fire,  
13 probably isn't going to make a fraud claim at all because  
14 there's no fraud, because it's so obvious of the risk of  
15 investing in PG&E. So why do we have this crazy formula that  
16 just invites litigation when the proof is to find out what the  
17 real claims are?

18           MR. JOHNSTON: Well, Your Honor, that's only half the  
19 story. To find out what the real claims are is the claim  
20 allowance.

21           THE COURT: Yeah.

22           MR. JOHNSTON: But that doesn't answer the question of  
23 how that claim, if it's allowed, is entitled to share with  
24 common shareholders.

25           THE COURT: No, I under --

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1                   MR. JOHNSTON: That --

2                   THE COURT: -- I understand that it doesn't, but --  
3 and then I know that's what you're trying to do here, but I'm  
4 struggling with why I should create a formula which is  
5 homemade -- not homemade; it's the wrong word. I don't mean to  
6 say you don't have a good intellectual basis, but there doesn't  
7 seem to be a single case that's dealt with this issue, and it  
8 may be a nonissue if the allowed claims are -- you have an  
9 insignificant amount.

10                  MR. JOHNSTON: But the liquidation and litigation of  
11 those claims is not going to make the question any easier at  
12 the end of the day, other than if we win, and there are no  
13 claims, but the plan has to account for the contingency of at  
14 least some of these claims ultimately being allowed. That's  
15 all that this formula does.

16                  THE COURT: I know.

17                  MR. JOHNSTON: And let me take one more crack at  
18 trying to explain why we think October 12th makes sense.

19                  What we're trying to do is really honor the core goal  
20 of 510(b), and that's by making the economic position of Class  
21 10A-II claimants consistent with that of holders of common  
22 stock. The goal is to make sure that the plan does not place  
23 the fraud claimant in a better position, or a worse position in  
24 relation to current shareholders than would've been the case  
25 had the Chapter 11 cases not occurred.

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1           We know that the shareholders of PG&E suffered a  
2 tremendous loss in value since October 2017. PERA's materials  
3 demonstrate that above all else. The suggestion that you heard  
4 on Friday that existing shareholders are somehow getting a  
5 windfall now is silly.

6           Existing shareholders are not being, quote/unquote,  
7 reinstated as Mr. Behlmann claims. Their existing ownership  
8 interests are being massively diluted by all the new stock  
9 issued under the plan, including more than twenty percent going  
10 to the fire trust, and all the new shares to be sold in the  
11 market as Mr. Karotkin and you discussed earlier this morning,  
12 and that of course, says nothing of the massive losses suffered  
13 before bankruptcy, which we saw from the stock price charts.

14           The plan formula treats the fraud claimants  
15 commensurate with the shareholders who suffered that loss. The  
16 formula takes damages, if any, that are proven by an individual  
17 fraud claimant, and converts them into common stock in a way  
18 that reflects the same diminution in value, as was suffered by  
19 the shareholders as a result of the fires.

20           Applying the plan formula, the Court need not parse  
21 out which claimants bought shares when, and which sold shares  
22 when. That's for the time of claim allowance which will  
23 address purchases and sales, and every claimant individual's  
24 circumstances. Once a fraud claimant is allowed, if ever, the  
25 plan formula puts the claimant on an equal footing with the

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1 shareholders who held their stock and suffered losses as the  
2 share price declined.

3 By definition, PERA's argument for a petition date  
4 capitalization, or an end of the class period capitalization  
5 ignores the losses suffered by shareholders, and in so doing --

6 THE COURT: Hang on. Mr. Johnston, I have to tell you  
7 that we're sympathetic -- I'm sympathetic to lots of people who  
8 lost things, from fire victims, to contract parties, to  
9 defrauded investors, to shareholders, but that's not the test.  
10 The test is under the plan, if you weren't subordinating under  
11 510(b) and be paying these people money, because you're taking  
12 advantage of the consequences of the law that says where do you  
13 treat people in a solvent case, the answer is you must treat  
14 them pari passu, not based upon relative harm.

15 And the real easy answer here is in the Superior case,  
16 that says let's kick this can down the road, and deal with it  
17 later. Why isn't that a good idea?

18 MR. JOHNSTON: We can't do that --

19 THE COURT: Well, I mean --

20 MR. JOHNSTON: -- because kicking the can down the  
21 road --

22 THE COURT: -- it's not good because you didn't want  
23 to reserve for it, but if you reserve for it --

24 MR. JOHNSTON: Well --

25 THE COURT: -- you do it.

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1                   MR. JOHNSTON: And then all of the goals that Mr.  
2 Karotkin talked about earlier today with respect to a  
3 successful equity offering, go out the window.

4                   THE COURT: But whose fault is that?

5                   MR. JOHNSTON: And kick --

6                   THE COURT: Is it the plaintiff's fault? You know,  
7 there could've been a motion to estimate under 502(c), eighteen  
8 months ago. There could've been a first day motion. This  
9 litigation was well known to PG&E, maybe not its bankruptcy  
10 lawyers, on the petition date, and here we are eighteen months  
11 later, and you're saying treat the defrauded folks like we're  
12 treating the lost expectation of the shareholders, and that's  
13 worthwhile, but it not what the law requires. So that's a  
14 dilemma.

15                  MR. JOHNSTON: What I'm struggling with, Your Honor,  
16 is the idea that kicking the can down the road, waiting for  
17 claim allowance is going to make this any easier. It's not  
18 unless all the claims are disallowed. We're still going to  
19 confront the exact same issue.

20                  THE COURT: Well, you could make a motion to estimate  
21 the claims. Now you can't do it in the next ten days but this  
22 gets back to my point. Your side, I can't remember who the  
23 lawyer was, maybe it was Mr. Bennett, I forget, somebody made a  
24 very persuasive argument to me that I shouldn't let this thing  
25 go to a class claim. And the arguments were, well, the class

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1 plaintiffs waited too long and, right or wrong, I made the  
2 decision to let the late claim process go, but I think I even  
3 invited them something to try to flush it out.

4 So here we are, literally on the eleventh hour, and  
5 you're saying, oh, I'm going to throw the refinance into the  
6 toilet because we've got these unknown people. Well, why not  
7 do something about it? And I would welcome obviously immediate  
8 resolution, but I can't -- I don't think it's fair to say well,  
9 the stockholders suffer, therefore these plaintiffs should  
10 suffer equally. That's not the test.

11 The test is, if they have a valid claim under  
12 non-bankruptcy law, 510(b), then does this thing that's nobody  
13 done before, right -- and in Superior, they didn't do it, and  
14 the court said that's okay. And obviously there were reasons  
15 in Superior that probably have justified waiting. But here, I  
16 mean, I'm struggling with this notion of because it's easy to  
17 use the funnel that seems almost arbitrary to secure the  
18 securities offering is, therefore, I throw the plaintiffs under  
19 the bus and that doesn't seem right either. So that's the --  
20 that's my dilemma at the moment.

21 MR. JOHNSTON: I agree, Your Honor. If our formula  
22 was throwing the plaintiffs under the bus, then you shouldn't  
23 do it. We do not think our formula is any way, shape, or form,  
24 throwing the plaintiffs under the bus.

25 THE COURT: If you'd made a 502(c) motion about the

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1 same time we had one coming down the road in the Tubbs Fire,  
2 you wouldn't have had the Article III stuff, you would've had  
3 me, and I would've had Mr. Etkin and Behlmann on one hand and  
4 you on the other giving me the data to estimate the claims, and  
5 I might've estimated them at fifty dollars, or I might've  
6 estimated them at twenty billion or million dollars. But I  
7 haven't had that opportunity.

8 MR. JOHNSTON: No, we did not put that before you in  
9 large part because these claims came in the door within --

10 THE COURT: Eighteen months --

11 MR. JOHNSTON: -- the last --

12 THE COURT: -- eighteen months ago.

13 MR. JOHNSTON: -- eight weeks.

14 THE COURT: Eighteen months ago.

15 MR. JOHNSTON: Yes, we do not have an estimation  
16 motion before you.

17 THE COURT: Right.

18 MR. JOHNSTON: The plan is our best effort at doing  
19 what Section 510(b), which is subordinating the fraud claim to  
20 the level of common stock. If -- in Superior, the reason why  
21 the court was able to put it off was because the court thought,  
22 one, I think that was a closely held corporation, so a much  
23 different situation, and --

24 THE COURT: I think you --

25 MR. JOHNSTON: -- if I recall correctly --

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1                   THE COURT: I think Superior got it because nobody  
2 thought about it, and the Court of Appeals, who was a former  
3 bankruptcy lawyer, said well, we'll just let this -- deal with  
4 it later, and that was the result.

5                   MR. JOHNSTON: And I believe the Court that it could  
6 kick the proverbial can down the road because the debtor  
7 appeared to be insolvent --

8                   THE COURT: Correct.

9                   MR. JOHNSTON: -- as well, so it would never be an  
10 issue.

11                  THE COURT: Correct.

12                  MR. JOHNSTON: So Your Honor, we think -- one last  
13 point. On the technical unfair discrimination point that PERA  
14 raised with respect to the subscription rights, the argument  
15 was that existing shareholders are getting subscription rights  
16 and the security fraud claimants are not.

17                  As an initial matter, as you heard this morning, this  
18 is very likely a moot point --

19                  THE COURT: Right.

20                  MR. JOHNSTON: -- if the amended registration rights  
21 or backstop rights are approved next Tuesday, there will be no  
22 more subscription rights --

23                  THE COURT: No.

24                  MR. JOHNSTON: -- and this is a nonissue.

25                  THE COURT: Well, I thought about that this morning,

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1 too. Yes, I would agree with you.

2 MR. JOHNSTON: If that doesn't come to pass and  
3 subscription rights are used, we submit for the reasons I  
4 discussed on Wednesday, that there is no unfair discrimination  
5 here. In any event, as you recognized, the holder of a  
6 subordinated fraud claim is in a fundamentally different  
7 position than an existing holder of common shares, and that  
8 difference in position justifies limiting any distribution of  
9 subscription rights to the shareholders.

10 Acequia and Peabody Energy, I think are pretty closely  
11 aligned there, and the two cases that Mr. Behlmann cited after  
12 ignoring the cases that I cited to you, are nowhere to be found  
13 in PERA's brief, Washington Mutual and Breitburn, and those  
14 cases simply are not unfair discrimination cases. They're  
15 equal treatment cases under Section 1123(a)(4) involving  
16 disparate treatment of members within the same class.

17 THE COURT: Okay.

18 MR. JOHNSTON: That's not this case.

19 THE COURT: Mr. Johnston, I'm going to cut you off in  
20 part because I want to -- I just can't go all day, in part  
21 because I understand argument, in part because I want Judge  
22 Newsome to get the big ticket item mediated, and I want him to  
23 get this one mediated for you, the sooner the better, if  
24 possible, because I don't -- obviously you make an argument,  
25 but you should understand some of my concerns, as well. So I

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1 would encourage your side to meet with the other side, and see  
2 if you could reach some resolution because it makes a lot of  
3 sense, but for now, I want to terminate this phase of the  
4 argument, and I appreciate your presentation.

5 MR. JOHNSTON: Okay. Thank you, Your Honor.

6 THE COURT: Okay. Mr. Bennett, are you going to add  
7 more on another subject, or this subject, or what's your  
8 pleasure?

9 MR. BENNETT: No, Your Honor, I don't have much to add  
10 but I do want to point, and stress what Mr. Johnston said about  
11 the other case, and this case, and that this is a case  
12 involving public securities and the issuance of even more  
13 public securities.

14 We have proposed a formula that actually works, that  
15 resolves the issues raised by your hypothetical. It is not by  
16 any stretch of the imagination arbitrary. It's part of a plan  
17 that should be confirmed.

18 THE COURT: Okay. All right. Are you going to make  
19 any other argument?

20 MR. BENNETT: I think that -- I don't know if I'm  
21 going to have to or not, but I know Mr. Karotkin wants me to  
22 stay on for the rest of the closing.

23 THE COURT: I'm not trying to get rid of you.

24 MR. BENNETT: No, look if you want to close me down,  
25 it's perfectly okay with me.

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1                   THE COURT: You can close yourself down. I can throw  
2 people out of the courtroom, but they can also shut me off,  
3 too.

4                   All right, Mr. Karotkin, let me take one more moment  
5 before I come back to you. I just have to check my thing. I  
6 have Mr. Hallisey's hand up. Mr. Hallisey, I'm not going to  
7 recognize you today. You've made your point, and this isn't  
8 your issue. So I'm simply not going to interrupt our schedule,  
9 and hear from you today.

10                  So Mr. Karotkin, I'm happy to hear from you on the  
11 closing arguments.

12                  MR. KAROTKIN: Okay. Thank you, Your Honor. Stephen  
13 Karotkin, Weil, Gotshal, & Manges for the debtors.

14                  I think what I'd like to do first, Your Honor, and --  
15 is to address some of the issues with respect to the executory  
16 contracts. And I know that during the arguments that were  
17 made, I made a number of remarks and I will try to keep it  
18 relatively brief, but I would ask if you could, could you let  
19 Mr. Tsekerides into the panel.

20                  THE COURT: Sure.

21                  MR. JOHNSTON: He has a couple of remarks.

22                  THE COURT: Ms. Parada, I didn't know Mr. Tsekerides  
23 was in the wings. Could you bring him in, please?

24                  MR. JOHNSTON: Your Honor, this is Jim Johnston. I  
25 will remove myself, unless you would like to me remain.

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1                   THE COURT: Okay. Well, we'll go ahead and do it,  
2 too. Okay. Thank you, Mr. --

3                   MR. JOHNSTON: Thank you.

4                   MR. TSEKERIDES: Good afternoon, Your Honor.

5                   THE COURT: Mr. Tsekerides, you put your tie back on.

6                   MR. TSEKERIDES: I did, and I'm only going to hot  
7 seat, so I might deal with some of the document sharing.

8                   THE COURT: Okay. All right.

9                   MR. KAROTKIN: Okay. Thank you.

10                  MR. TSEKERIDES: Do you want me to pull that up,  
11 Steve?

12                  MR. KAROTKIN: Not yet. So Your Honor, I think that  
13 one thing is abundantly clear from what you heard earlier today  
14 on all of the arguments with respect to the executory contract  
15 issues, and the contribution, and indemnity issues, and that  
16 every claim, if it ever arises, and we don't know if any of  
17 these claims will ever arise, will have its own unique  
18 circumstances and how that claim should be determined, Your  
19 Honor, should wait until those claims arise, and those  
20 circumstances arise so they can be appropriate determined.

21                  Multiple parties have acknowledged this point, and  
22 they've said this, whether 502 applies or it doesn't apply,  
23 whether a claim was fairly contemplated or not fairly  
24 contemplated, when was the -- when did the claim arise?

25                  And in the context before you today, there's no

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1 reason, and it would be inappropriate, in fact, to make blanket  
2 rulings, on any of these issues. I think that -- if I recall  
3 correctly, both Mr. Bray, Mr. McKane, and Mr. Schiff, said they  
4 don't even know what claims there are, or what claims could be  
5 raised but nevertheless, Your Honor, they're asking you today  
6 to give them a categorical pass on what rides through, what  
7 doesn't ride through, what obligation there was to raise a  
8 claim, or a default in connection with the cure process. In  
9 fact, I think Mr. Bray said, and I think it's a pretty good  
10 quote that, "Even he does not know every single permutation  
11 that could arise here," and that's really the point; we don't  
12 know.

13 These types of claims, again if they ever arise,  
14 should be addressed at the time the claims arise, and then Your  
15 Honor can apply to those particular circumstances, precisely  
16 what the legal standard is, whether it should've been -- as I  
17 said, whether it should've been raised, not raised.

18 THE COURT: Well, give me a -- let's have a practical  
19 answer. You're nice to say that I can deal with it. I don't  
20 know how long I'm going to be doing this. I don't know how  
21 long you're going to be doing this.

22 MR. KAROTKIN: I'm going to be doing it a lot less  
23 than you, I think.

24 THE COURT: But the problem is that, and this is what  
25 I experience all the time, it might be presented two or three

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1 years from now to a state court judge, or a federal district  
2 court judge, or an administrative law judge, and none of the  
3 above have the knowledge, and the expertise that you and I have  
4 in our specialty. And so what do I do when Mr. Gorton's  
5 client, or Mr. McKane's client -- well, certainly to the extent  
6 that FERC is involved, but that's a little different with Mr.  
7 Tredinnick, City of San Francisco. What do I do if three years  
8 from now in the Superior Court in San Francisco, there's a  
9 debate about was some indemnity provision that was page, you  
10 know, a supplement, 2,000 pages long, did it survive the  
11 bankruptcy or not? How are the litigants and their lawyers,  
12 and the non-bankruptcy-trained judicial officers supposed to  
13 have even a clue to answer those questions?

14 MR. KAROTKIN: Your Honor, it's not dissimilar from  
15 any other situation where the issue of discharge comes up  
16 several years after a plan has been confirmed. And in fact,  
17 that was the precise situation in the Arriva Pharmaceuticals  
18 case where an issue as to whether a claim that should have been  
19 asserted in connection with a cure under Section 365 was later  
20 asserted in a non-bankruptcy jurisdiction, and the debtor  
21 reopened the case and brought an adversary proceeding in the  
22 bankruptcy court to adjudicate it. And that's what also should  
23 happen here, that's how it works. And then the bankruptcy  
24 court, which has the special expertise to deal with these  
25 issues under 502 assumption, what does assumption mean, can

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1 address the issues.

2 As you recognized, Your Honor, this dispute basically  
3 focuses on whether all pre-petition indemnification, and  
4 contribution claims flow through when an executory contract is  
5 assumed. And as you recognized, that's not the law, and  
6 perhaps more importantly, as I just said, there's no reason to  
7 address that now.

8 Assumption of an executory contract under the  
9 Bankruptcy Code is precisely that, assumption under Section  
10 365, and as you noted, it can implicate a number of factors,  
11 and as set forth appropriately by the court in the Arriva  
12 Pharmaceutical case, that's from your district, Your Honor,  
13 including an obligation, there's an obligation, to assert  
14 rights in connection with a cure under Section 365.

15 And if I could ask Mr. Tsekerides to put up the slide.  
16 You could put up the second -- if you could just put the third  
17 slide.

18 THE COURT: What am I looking at here? Is this from  
19 the brief?

20 MR. KAROTKIN: No, this is some slides we have that we  
21 can file.

22 THE COURT: Oh, okay.

23 MR. KAROTKIN: But Arriva Pharmaceutical makes it  
24 clear that the burden is on the non-debtor party to the  
25 executory contract to come up with all claims, nonmonetary, as

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1 well as monetary claims, and to assert all defaults prior to  
2 the debtors' assumption. And there's a good purpose for that,  
3 Your Honor, and I think that Mr. Newman, in connection with  
4 McKinsey, which I'll address. The purpose of that is to  
5 provide the debtor with the knowledge, the knowledge of what is  
6 going on, so it can make a decision to either assume the  
7 contract, or not assume the contract, and that's why there's an  
8 obligation to go forward. And if the party comes forward with  
9 claims and indemnification claims, well, then maybe the debtor  
10 decides not to assume the contract.

11           But you can't lie in wait, and then assert claims  
12 later, which again, as you said, you could have asserted  
13 earlier, and that's --

14           THE COURT: Don't' you think the issue that most of  
15 the lawyers who argued today, or all -- I don't know them all,  
16 then you probably know a good number of them, too, they're  
17 experienced bankruptcy lawyers. And the issue is what's a  
18 nonmonetary default versus something that doesn't rise itself  
19 to default?

20           In other words, Arriva from the quote, and I don't --  
21 you're going to tell me who decided it, it was one of my  
22 colleagues, I don't know by name, but I can imagine if it were  
23 my decision too, it would be -- it's a no-brainer if there's a  
24 monetary or nonmonetary default, but the problem is what if  
25 there is no default, what has to be asserted --

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1 MR. KAROTKIN: Well, again --

2 THE COURT: -- by --

3 MR. KAROTKIN: -- again, Your Honor, I think you  
4 said --

5 THE COURT: There's nothing to assert, right? Huh?

6 MR. KAROTKIN: You said it earlier, it's the fair  
7 contemplation test.

8 THE COURT: Right.

9 MR. KAROTKIN: Do you have a claim? A fair  
10 contemplation test. And again, that should be addressed later  
11 when the claim arises, if ever, in the context of a dispute  
12 where those issues are joined.

13 Now --

14 THE COURT: Well, the problem -- by the way, I  
15 interrupted you again, the problem is we've taken a 365 concept  
16 and extended it, as I think one of the other lawyers said  
17 today, to some concepts that really go well beyond 365, and  
18 they go on --

19 MR. KAROTKIN: Precisely.

20 THE COURT: -- to discharge --

21 MR. KAROTKIN: Precisely.

22 THE COURT: -- the petition and automatic stay issues,  
23 and --

24 MR. KAROTKIN: Well no, I think Your Honor what  
25 they've gone onto, and what people are asserting like Mr. Bray,

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1 is that he's saying assumption under Section 365 is the  
2 equivalent of reinstatement, or non-impairment. You -- first  
3 of all, it's not. And secondly, the argument that this is an  
4 impairment issue, you rejected in connection with the  
5 post-petition interest. In connection with post-petition  
6 interest, what the UCC argued was that impairment was the same  
7 as reinstatement, that all rights flow through, including the  
8 right to contractual interest, and you appropriately rejected  
9 that because it doesn't. That is impairment under the law, not  
10 impairment by reason of the plan.

11 THE COURT: That's right.

12 MR. KAROTKIN: And that's what they're trying to do  
13 here. What he's trying to say is ignore the requirements of  
14 Section 365, ignore the requirements that I've got to assert  
15 defaults, every default, ignore that, and give me a free pass.  
16 And again, that's not what the law is.

17 Now I'd go back to the first slide, which I think  
18 really addresses a lot of the issues that have been raised  
19 here. First, we will amend the proposed confirmation order  
20 that will be presented to Your Honor, to make it clear that all  
21 rights and defenses of any entity with respect to any assigned  
22 right and cause of action, asserted by the Fire Victim Trust  
23 against such entity, may be asserted against the Fire Victim  
24 Trust. Couldn't be more clearer. Could not be more clearer,  
25 addresses, I would say, eighty percent of the issues that have

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1 been raised.

2                 And we will also include in the order that any rights  
3 of setoff, or recoupment, or defenses, held by any entity are  
4 expressly retained, and preserved, subject to any applicable  
5 limitations to the Bankruptcy Code.

6                 Again, we will clarify that, so there is absolutely no  
7 mistake about it, but --

8                 THE COURT: But are you saying that these two  
9 paragraphs, which makes sense to me, also apply to any assumed  
10 contract?

11                 MR. KAROTKIN: Yes.

12                 THE COURT: I mean, it doesn't say it. Be careful, I  
13 don't want to --

14                 MR. KAROTKIN: It applies to --

15                 THE COURT: -- I don't want to set you up either  
16 because you don't want to leave for the future, something that  
17 should've been asserted before. So --

18                 MR. KAROTKIN: Your Honor, these are rights -- this is  
19 with respect to assigned rights and causes of action.

20                 THE COURT: Right.

21                 MR. KAROTKIN: What the parties were objecting to is  
22 that these claims would be assigned to the trust, and they  
23 would be naked. They couldn't assert whatever rights and  
24 defenses they had if those claims had been asserted against the  
25 debtors because those -- the debtors claims are the claims that

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1 are being pursued by the trust.

2                 And what we're making clear here is that to the extent  
3 they would have rights and defenses if we asserted that claim,  
4 they would have the same rights against the trust. That's what  
5 they asked for, and that's what we're giving them, and there's  
6 no issue with that. And as I said, that addresses most of  
7 their claims or most of the issues they've raised today. And  
8 certainly, Your Honor, I think it has to be absolutely clear  
9 that under no circumstances, and let me go to slide number --

10               THE COURT: See, Mr. Karotkin --

11               MR. KAROTKIN: Oh, number --

12               THE COURT: -- I think I heard you talking about the  
13 365 issue, and you put up a slide that really doesn't focus on  
14 the whole 365 issue, it's a broader issue, and I understand, I  
15 think the language that you have here is fine, and it belongs  
16 in the order, but it doesn't answer the question on these  
17 executory contracts.

18               MR. KAROTKIN: Well, Your Honor, that was -- most of  
19 those parties raised that issue: that in connection with  
20 confirmation of the plan and the plan going effective, the  
21 assigned rights and causes of action would go to the trust.  
22 And they wanted to make sure that their rights and defenses  
23 were preserved. So we've addressed that.

24               Under Section 365, Your Honor, you made it clear --  
25 and I totally agree with you -- that there is an obligation to

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1 come forward with defaults and claims in connection with cure.  
2 And we're agreeing with that. You can't -- there is nothing in  
3 the Bankruptcy Code or in Section 365 or any other provision in  
4 the Bankruptcy Code that says you get a free pass.

5 THE COURT: So go back to your slide from Arriva.  
6 Mr. -- okay. So Arriva -- right there, right on top -- cure  
7 recovers and applies to monetary and nonmonetary defaults. It  
8 doesn't say it applies to nondefaults.

9 MR. KAROTKIN: Well -- but Your Honor, read the next  
10 sentence. The burden is on the nondebtor party to assert all  
11 defaults: monetary or nonmonetary --

12 THE COURT: I know.

13 MR. KAROTKIN: -- to the debtors' assertion.

14 THE COURT: What if I said, there is -- what if I said  
15 there is no burden on the nondebtor parties to assert  
16 nondefaults? Nondefaults.

17 MR. KAROTKIN: I'm not sure, Your Honor, I understand  
18 what that means.

19 THE COURT: It means --

20 MR. KAROTKIN: But if someone --

21 THE COURT: It means if there --

22 MR. KAROTKIN: -- someone --

23 THE COURT: It means if there's -- there is no --

24 MR. KAROTKIN: There's no point to raise in the  
25 context later, when a claim arose, and that could be determined

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1 in the context of the action or dispute, then they could argue  
2 that.

3 THE COURT: What I'm asking you is why we can't have  
4 the confirmation order say, in some, perhaps, better words, if  
5 there are no defaults and no events that might give rise to a  
6 default or nothing that would, under any circumstance,  
7 contemplate the existence of a right to assert a default, that  
8 nobody has to do anything? They pass through. I mean, I  
9 realize that's not very artful, but that's the concept.

10 Or stated differently, Mr. Karotkin, if you -- well,  
11 go back to my example. If you and I have a contractual  
12 relationship and everything is hunky-dory, nothing is amiss  
13 either way, and you go through and assume the contract, I don't  
14 have to do anything. And if you breach it in the future, then  
15 I have a claim against you in the future.

16 Right?

17 MR. KAROTKIN: Yes, if there is a -- if there is no  
18 default. But that doesn't permit you to come in in the future  
19 and say, oh, I forgot about something, you did something wrong;  
20 I had a -- I had a claim within reasonable contemplation, but I  
21 didn't raise it. It doesn't allow you to do that.

22 THE COURT: No, I agree. I agree with you.

23 MR. KAROTKIN: I --

24 THE COURT: If you had reasonable contemplation, you  
25 should have done it.

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1                   MR. KAROTKIN: And again, but what these -- what the  
2 UCC and the other parties are asking you to do is to say,  
3 ignore that.

4                   THE COURT: No, I know.

5                   MR. KAROTKIN: They get a free pass for everything,  
6 and that's not the law.

7                   THE COURT: You've said it many times that this is no  
8 free pass, and I agree with you it's no free pass.

9                   MR. KAROTKIN: Okay. And we think the way -- put  
10 aside -- I'll get to paragraph 13 that everybody's talking  
11 about, that's caused so much consternation here -- but I  
12 think -- there's one point I just -- I really have to really  
13 clarify, is on page -- slide 4. And this is with respect to an  
14 argument that the UCC made in its objection. It was kind of  
15 made half-heartedly, in my opinion, and I know Mr. Bray -- it  
16 seems to me, for obvious reasons -- didn't raise that argument  
17 today.

18                  But he did suggest that the Court could eliminate the  
19 rights of the debtor, under California Code of Civil Procedures  
20 Section 877, on the -- on some basis. There is absolutely no  
21 basis that either assumption, reinstatement, or anything could  
22 eliminate the debtors' rights and defenses under that section.  
23 And as you, Your Honor, have repeatedly recognized,  
24 particularly with respect to claim allowance, that's determined  
25 in accordance with applicable state law.

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1                   And to the extent Mr. Bray is suggesting that if a  
2 claim for indemnity or contribution is ever raised in the  
3 future, that the debtors would not have the right to assert  
4 that defense under applicable state law, that's completely  
5 wrong. And we must make sure that that right is preserved.

6                   THE COURT: I want to make sure that slide 4 gets in  
7 the record. So would you make sure somehow --

8                   MR. KAROTKIN: Yes, we will.

9                   THE COURT: Okay.

10                  MR. KAROTKIN: We will.

11                  So turning to the -- turning to one other point that I  
12 think is important. When Mr. Lubic -- I believe it was Mr.  
13 Lubic -- was making his argument, he said, well -- he was  
14 concerned about certain provisions of the plan that perhaps  
15 could prejudice his client's rights. And he had an easy fix.  
16 He had an easy fix, and his easy fix was -- and I think these  
17 were his exact words -- he's going to fix it by saying,  
18 notwithstanding anything else in the plan or the confirmation  
19 order, they can do whatever they want.

20                  That doesn't work. If they have particular items in  
21 the plan or confirmation order which they think unduly  
22 prejudice their rights, we can try to address those, or the  
23 Court can try to address those. But to say a wholesale  
24 disregard of the plan and the confirmation order, which  
25 provides for so many different things, including approvals of

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1 settlements, including discharge provisions, any number of  
2 things, including findings with respect to good faith and other  
3 items, that doesn't work.

4 So maybe there is a way to craft some language -- and  
5 we'll be happy to look at language that both Mr. Bray and other  
6 people suggest -- but it is a nonstarter to say,  
7 notwithstanding anything contained in the confirmation order in  
8 the plan, because that will strip us of every single right  
9 under those documents. And that will not work.

10 So as we stated at the outset, we think we have a  
11 solution for this. And I think, Your Honor, that you were  
12 thinking about it as well.

13 And I would ask Mr. Tsekerides to turn to the last  
14 page.

15 There is no need to make definitive rulings on these  
16 issues now. As I said, a determination can be made in the  
17 context of an actual dispute, if it ever arises. Your Honor,  
18 we don't think there are -- there will be any valid,  
19 noncontractual indemnification claims, based on the California  
20 statute. And with respect to contractual claims, we don't  
21 think there's going to be many there, because most of the  
22 contracts don't provide for indemnification. So maybe there  
23 will be claims, but we don't think a lot of claims will arise.  
24 And they can be addressed when they do arise.

25 There's no reason, as I said before, to make blanket

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1       rulings. And deferring a determination is better than issuing  
2       a blanket ruling in a vacuum on the impact of Section 502(e),  
3       for example, or other matters, which are so factually oriented,  
4       and they cannot be addressed in the abstract.

5                  But to make it clear, Your Honor, everybody complained  
6       about -- I think it's paragraph 13 in the plan supplement --  
7       that -- we will be happy to delete that.

8                  THE COURT: Mr. Tsekerides, scroll down to the bottom  
9       there. You got it? Okay.

10                 MR. KAROTKIN: So we will delete from the plan  
11       supplement -- I think it's in the notice of assignment -- the  
12       language that these contractual indemnity rights are  
13       automatically discharged on assumption. People can  
14       appropriately preserve their rights. But in that context, Your  
15       Honor, they cannot strip us of our rights. And I think that  
16       that's the most logical way to proceed.

17                 THE COURT: Is this slide 5? Mr. Karotkin.

18                 MR. KAROTKIN: Yes, Your Honor.

19                 THE COURT: Okay. Okay. Make sure that I get that in  
20       a hard copy, one way or another, so I can preserve it for the  
21       record. I mean, I can't do it from our screen here.

22                 MR. TSEKERIDES: We'll file it, like the others have.

23                 THE COURT: Okay. Thank you.

24                 MR. KAROTKIN: Okay. So with that, Your Honor, that  
25       concludes my argument with respect to that particular issue.

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1                   THE COURT: Okay.

2                   MR. KAROTKIN: So if I could move on? Give me a  
3 moment, please.

4                   I have a lot of papers here.

5                   Okay, Your Honor, I apologize. I think that the  
6 remaining issues with respect to outstanding objections -- and  
7 again, we did file, as I noted, the amended plan, which I  
8 believe addresses the issues. I think that the remaining  
9 issues raised by the governmental entities are with respect to  
10 Section 8.2(e), with respect to which there was a lot of  
11 discussion already in the context of the assumption of  
12 executory contracts; and 10.9(f), with -- which, I believe,  
13 either Mr. Gorton or one of his colleagues raised.

14                  I think the other outstanding matters are respect to  
15 the Roebbelin objection, the Gantner, the California Franchise  
16 Tax Board, and to certain issues raised by individual fire  
17 victims and fire victim attorneys. There, of course, was the  
18 issue with respect to the registration rights agreement, which  
19 is the subject of mediation.

20                  So turning first to the remaining governmental  
21 entities and DOJ objection, we believe -- and I said it  
22 earlier -- Section 8.2(e) is entirely consistent with what  
23 Section 365 says. And it results in a recognition that when a  
24 contract is assumed under Section 365, it results in the cure  
25 of all defaults as of the assumption date, not just monetary

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1 defaults. I think, as I said earlier, they're trying to  
2 restrict the scope of that. We think Section 8.2 is perfectly  
3 appropriate to address the situation that I mentioned earlier,  
4 Your Honor. You have to come forward. The debtor has a right  
5 not to be surprised when it's making a decision to assume or  
6 reject, and I think that's what Section 8.2 says.

7 And I don't want to go through the Arriva  
8 Pharmaceuticals case again. But it's consistent with Arriva  
9 Pharmaceuticals. And I think that, Your Honor, you can -- I'll  
10 tell you who -- I'll tell you who decided that case. And it's  
11 really, directly on point. It's -- give me one second.

12 THE COURT: Okay. I'll find out. I don't --

13 MR. KAROTKIN: Judge Jelam (phonetic).

14 THE COURT: Judge Jelam? Okay.

15 MR. KAROTKIN: So I think that that addresses the 8.2  
16 issue. And there's really no more reason to talk about it.

17 With respect to Section 10.9(f), frankly, Your Honor,  
18 I don't understand the objection to Section 10.9(f). It's  
19 absolutely clear that it's limited in scope. It's  
20 appropriately drafted. I don't see any way it can be  
21 interpreted in the way that Mr. Gorton and his colleagues say  
22 it can be interpreted. It's appropriately circumscribed to  
23 things -- release or exculpated pursuant to the plan, and it  
24 doesn't warrant any modification. And there's really no --  
25 there's nothing else to say about it.

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1                   So with that, Your Honor, we believe it's appropriate,  
2 and there's no reason to modify it.

3                   With respect to the Roebbelan Contracting objection,  
4 as you may recall, the Roebbelan claim is a partially secured  
5 claim by mechanics liens. And the objection focuses on Section  
6 4.16 of the plan that addresses the treatment of claims of  
7 secured creditors. And there aren't many secured creditors in  
8 this case, Your Honor. Basically, that's a class of mechanics  
9 lien or is in similarly type situated people.

10                  The thrust of the objection is that Roebbelan wants  
11 the plan specifically tailored -- the plan provision  
12 specifically tailored to their situation rather than to the  
13 treatment of all claims in the class. And that's not  
14 appropriate. They wanted us to recognize they're entitled to  
15 fees, expenses, and interest at the contract rate. And they're  
16 only entitled to that, Your Honor, as you well know, if they're  
17 oversecured. And that has not yet been determined. And the  
18 plan provision addresses it. If they are oversecured, they  
19 will be entitled to whatever they're entitled under Section  
20 506.

21                  I told Mr. Roebbelan's (sic) counsel, with respect to  
22 one other item, he was concerned that the provision did not  
23 take -- did not provide that, at such time as a claim became  
24 allowed, that it would be paid within thirty days. And we're  
25 happy to make that change to accommodate that.

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1                   THE COURT: Can you give me the claim number -- I mean  
2 the docket number of the objection?

3                   MR. KAROTKIN: If you give me a minute, I can.

4                   THE COURT: If you don't have it readily available, I  
5 can take it up later. I mean, I've got a chart of all the  
6 objections. I just don't have --

7                   MR. KAROTKIN: Yeah.

8                   THE COURT: I can't put my hand on everything.

9 That --

10                  MR. KAROTKIN: I have it. I have it. I have it.

11                  It's 7282.

12                  THE COURT: 728- what?

13                  MR. KAROTKIN: 7282.

14                  THE COURT: 2? Thank you.

15                  MR. KAROTKIN: Okay. So I think that that disposes of  
16 the Roebbelon objection.

17                  With respect to Mr. Abrams -- and Your Honor, the  
18 debtors understand Mr. Abrams' passion and deeply regret all  
19 that happened to him and his family and his community. But  
20 that, Your Honor, is not a reason -- but that, Your Honor,  
21 actually is a reason to confirm the plan rather to face the  
22 alternative and the substantial delay in payments to wildfire  
23 victims that would be inevitable if we don't move forward with  
24 this plan.

25                  Suffice it to say, Your Honor, Mr. Abrams' arguments

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1 lack every -- lack any evidentiary foundation. And in fact,  
2 Your Honor, the record is directly to the contrary as to all --  
3 almost -- virtually all the allegations he has made. Simply by  
4 way of example, Your Honor, the evidence as to feasibility is  
5 uncontroverted: billions of dollars currently being spent on  
6 wildfire mitigation and billions of dollars budgeted for the  
7 future for wildfire mitigation efforts, participation in the  
8 go-forward wildfire fund, access on the effective date to five  
9 billion dollars of a working capital facility and to the  
10 capital markets to address any potential contingencies.

11                   Your Honor, newspaper articles are not evidence.  
12 There is no evidence of improper solicitation of votes, and  
13 there is no evidence -- I believe he said that hedge funds are  
14 going to exit the stock immediately. And there's, similarly,  
15 irrelevant information or allegations he's made with respect to  
16 claims trading and the fact that claims may have been purchased  
17 at a discount. That is irrelevant to the findings you must  
18 make under 1129(a).

19                   I think -- we understand that Mr. Abrams and Ms.  
20 Wallace may be unhappy with the plan. Tens of thousands of  
21 other fire claimants, however, are not. And neither he, Ms.  
22 Wallace, and, for that matter, Mr. Scarpulla or Mr. Hallisey,  
23 have presented any evidence to frustrate the wishes of those  
24 tens or thousands of claimants.

25                   Mr. Scarpulla and Mr. Hallisey have presented no

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1 evidence in -- their suggestion that the plan be modified  
2 across the three fire victim classes is not a solution. That's  
3 only a path, Your Honor, to complete chaos, determination of  
4 the RSAs, and months and months and months of delays, and value  
5 destruction.

6 Mr. Tosdal focused primarily on plan classification  
7 issues. As you said, Your Honor, you have already addressed  
8 this issue in connection with your recent decision with respect  
9 to the Adventist dispute regarding the fire victim trust claims  
10 resolution procedures. I think it's been more than adequately  
11 demonstrated in the evidence that we've presented that  
12 requirements for classification under the plan have been  
13 satisfied. Section 1122(a) does not require that all similar  
14 claims be in the same class. And as you well know, a debtor  
15 has substantial discretion to place similar claims in different  
16 classes.

17 There simply has to be a business or economic  
18 justification to do so or that it makes economic sense. The  
19 testimony before the Court demonstrates the justification for  
20 classification based on factors, Your Honor, among others, of  
21 settlement history, the differences between subrogation  
22 claimants and fire victim claimants, the fact that fire victim  
23 claimants had their own official committee -- or have their own  
24 official committee in this case, with no representatives of the  
25 subrogation claimants, and the unique relationships that the

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1 debtors have with the public entities who signed settlement  
2 agreements.

3 And one thing Mr. Tosdal did say is that the Dow  
4 Corning case supported his argument that settlement dynamics  
5 are an improper basis to separately classify claims. Well,  
6 that's just plain wrong. And in fact, Dow stands for precisely  
7 the opposite principle. In Dow, certain claimants challenged  
8 the separate classification of breast implant victims based on  
9 geographic location. And in upholding that classification, the  
10 court noted:

11 "We begin by noting the fairly obvious point, upon  
12 which there is virtually no disagreement. All breast implant  
13 claims, both domestic and foreign, are substantially similar.  
14 All are unsecured, unliquidated, and disputed toward claims  
15 arising out of the debtors' fail and manufacture of silicone  
16 gel breast implants. All such claimants allege that the breast  
17 implants caused or will cause them personal injuries."

18 Again, the same argument that Mr. Tosdal was trying to  
19 make, which really doesn't even apply here.

20 Then the Court further stated, "In upholding the  
21 classification, the separate classification of those claims  
22 based on geographic location, the debtor made a considered  
23 judgment as to what" settlement amounts -- "what settle amounts  
24 the various breast implant payments would accept in resolution  
25 of their claims. The fact that, in the debtors' judgment,

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1 different breast implant claims warrant different settlement  
2 offers is a perfectly legitimate reason to classify them  
3 separately."

4 So to the extent that Mr. Tosdal was raising that  
5 argument should be rejected.

6 Here, in part, settlement dynamics did drive the  
7 classification, and that is similarly appropriate, as was found  
8 in the Dow Corning case.

9 I want to quickly address the Gantner objection with  
10 respect to PSPS, and some remarks that Mr. Harris made on the  
11 record to suggest that I agreed with what he was saying. I'm  
12 not sure that I did agree with what he was saying.

13 First of all, just to make it abundantly clear, the  
14 debtors by no means admit that any claims that could be  
15 sustained based on PSPS are administrative expense claims. And  
16 as I'm sure you're aware, Your Honor, Mr. Gantner filed his  
17 complaint asserting, I believe, that same type of an argument.  
18 That complaint was dismissed on the pleadings. And as we  
19 stated in our reply, there is no reason that the plan has to  
20 state or acknowledge that all claims related to PSPS are  
21 administrative claims. In the unlikely event any of those  
22 claims are sustained -- and we don't think that's possible,  
23 certainly, based on your ruling and the applicable law -- and  
24 if it -- if they are sustained and if they are determined to be  
25 administrative claims, then they will be treated as

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1 administrative claims under the plan. No modifications under  
2 the plan are required to address the particular PSPS  
3 circumstances.

4 As to the California Franchise Tax Board, we've made  
5 several modifications to the plan to accommodate this  
6 objection. To the extent there are any remaining objections --  
7 and I don't know whether there are -- they should be rejected.  
8 The plan's treatment of priority tax claims is entirely  
9 consistent with Section 1129(a), and it should be approved.

10 Lastly, a few remarks, Your Honor, on Mr. Kelly and  
11 Mr. Skikos' remarks, and just some final words. Mr. Kelly and  
12 Mr. Skikos spoke briefly on behalf of their clients, and I  
13 think it's important to note that Mr. Kelly's firm signed the  
14 tort claimants' RSA, as did Mr. Skikos, I believe, which set  
15 forth the settlement that is embodied in the plan, including  
16 the formula for the stock portion of the consideration to be  
17 delivered to the fire victim trust, and the formula for  
18 determining those shares.

19 Under these circumstances, for Mr. Kelly to assert  
20 last week, Your Honor, not once -- not once, but twice, that  
21 fire victims were forced -- that's his word -- were forced to  
22 take the stock is a bit disingenuous. They voted  
23 overwhelmingly to accept the plan, to accept the stock, with  
24 full disclosure as to the value or the potential fluctuation in  
25 value of that stock. That disclosure was approved by the

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1 Court, and there was supplemental disclosure drafted by the  
2 tort claimants' committee that addressed the very same issues.

3 And with respect to the registration rights agreement,  
4 I don't want to get into that. They addressed that as well.  
5 That's currently being mediated, and I don't think there's any  
6 reason to address the issues they raised at this time. But we  
7 will be prepared to do so if that doesn't get resolved.

8 And I don't really want to address the comments Mr.  
9 Julian made with respect to his solution that he proposed last  
10 Friday and that you questioned him about today, as to what  
11 should be contained in a proposed order. Suffice it to say  
12 that we believe that that language is totally inappropriate.  
13 But hopefully, Your Honor, Mr. -- Judge Newsome will be  
14 successful in bringing that to a mediated solution relatively  
15 quickly.

16 Your Honor, as I said at the outset of my opening  
17 remarks last week, the plan before the Court represents a  
18 remarkable achievement: a virtual universal consensus  
19 including all CPUC approvals, the support of the Governor's  
20 office in compliance with A.B. 1054. The fire victims have  
21 spoken, and the debtors have plainly demonstrated that the plan  
22 satisfies the requirements for confirmation under A.B. 1054.

23 Your Honor, no objecting party -- no objecting party  
24 has presented any cognizable evidence to support their  
25 objections, much less to defeat confirmation and the will of

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1 the claimants. In fact, Your Honor, as I've said previously,  
2 confirmation is the only path here. Any other path will be  
3 value destructive, eliminate any chance of meeting the A.B.  
4 1054 deadline, and getting the protection of the go-forward  
5 wildfire fund prior to the next fire season, and perhaps most  
6 importantly, Your Honor, will delay distributions to fire  
7 claimants for months, if not year.

8                   Your Honor, we've met our burden. The debtors have  
9 met -- the plan proponents, I should say, have met their  
10 burden. We urge you to promptly confirm the plan.

11                   Thank you.

12                   THE COURT: Thank you, Mr. Karotkin.

13                   A couple of questions for you. If there's a solution  
14 and a successful resolution of the rights issue in the coming  
15 days, I presume I will hear about it fairly soon, as will a lot  
16 of other people, and I don't have to be concerned about it.  
17 And -- but if not, I presume I should -- from what you've said  
18 this morning, at least for the next few days, there's nothing  
19 pressing for me to act on so that -- you said, if I can cut  
20 this right, next Tuesday -- that's eight days from now -- I  
21 will hear the motion to adjust the backstop matters. And I  
22 won't even hear it if there's no objection, presumably. But --  
23 and so that's out of the way. And the process can then begin  
24 by the people that need to go on that piece of the -- of it.

25                   If, for some reason, the --

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1                   MR. KAROTKIN: Not without the registration rights  
2 agreement being resolved.

3                   THE COURT: Well -- but I thought you told me that --  
4 well, okay. Then I -- maybe I conflated what you said, because  
5 you made it -- you made it clear that the debt financing is not  
6 time -- I mean, they need to get moving on that and will do so  
7 after next Tuesday. But on the --

8                   MR. KAROTKIN: Right.

9                   THE COURT: -- debt financing, that's -- that depends  
10 upon the rights agreement, right, or I got that wrong?

11                  MR. KAROTKIN: No, I think, Your Honor, that's right.  
12 I think the debt financing could move forward earlier. And as  
13 I -- I also suggested to Your Honor; perhaps we could have a  
14 separate order to address the debt financing.

15                  THE COURT: Yes, I understood that. But maybe I  
16 misunderstood you that that was the order that dealt with  
17 what's coming up next Tuesday. Maybe I got that confused.  
18 So --

19                  MR. KAROTKIN: No, no. I don't think -- no, that's  
20 the debt financing, not the equity financing.

21                  THE COURT: Okay. Let me rephrase my question then,  
22 because I don't want to beat this to death for now. I --

23                  MR. KAROTKIN: And if Mr. Bennett -- I'm sure he will  
24 clarify any mistake I've made in trying to explain what's going  
25 on.

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1                   THE COURT: Well, he's smiling, and he's not unmuting  
2 himself. So let me try it again.

3                   I have to think about what I have to do, okay? So  
4 finally, the matter's submitted to me. And obviously, the more  
5 things that get resolved, the better. So if the committee, the  
6 OCC, and the various governmental entities and agencies fall in  
7 line, then that solves my problem. And if the mediation that  
8 Judge Newsome is overseeing is resolved favorably, that solves  
9 the problem. Those are two things that will be out of the way.

10                  But let's take -- going back to those two, if there's  
11 not a resolution, then I believe it's up to me to make the  
12 decision on the disputes that we've been discussing most of  
13 today on executory contract, et cetera, et cetera. And if  
14 there is no announcement of a resolution of the mediation, at  
15 some point, somebody has to tell me that it's time to listen to  
16 the arguments and make whatever decision that I'm supposed to  
17 make. And I'd rather just leave it at that.

18                  And so -- and it's -- so the issue of debt financing  
19 and equity financing are different, but at least the nearest  
20 thing that has a time sensitivity to it is a week from Tuesday.

21                  MR. KAROTKIN: Well --

22                  THE COURT: June 30th lurks out there, and I'm not  
23 planning to wait until June 30th to issue a decision. I  
24 want --

25                  MR. KAROTKIN: But I think with respect to the debt

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1 financing, Your Honor, if it would be possible to get a short  
2 form of order from you sometime this week, that would, I think,  
3 alleviate some of the pressure on you as well.

4 THE COURT: Okay. Well, I think what I said this  
5 morning -- if I can keep track of everything I said this  
6 morning -- is that maybe if the two official committees sign  
7 off on it, I could just do it without anybody in a dispute  
8 there. There may be some people that have an issue, but I just  
9 can't solve everything at this point.

10 And if, at some point in the coming days, there is an  
11 impasse and no likely mediated result on the rights offering  
12 question, then somebody's got to tell me what to do and what --  
13 when I should focus on it.

14 MR. KAROTKIN: You mean registration rights.

15 THE COURT: Sorry. Registration. Registration.

16 So my homework assignment is to sort through these  
17 issues that we've been arguing about, eliminate those that have  
18 been resolved, those that might get resolved in the coming  
19 days, and then issue a decision. And I will tell you, Mr.  
20 Karotkin, I'm still -- I won't say that I'm comfortable, but I  
21 want to avoid problems of getting down into phrases or --  
22 phrases or languages in an order. So we may have to have a  
23 hearing just to discuss the finetuning of the order.

24 But I can't -- and it's not fair to you; it's not fair  
25 to the litigants; it's not fair to anybody to turn that into a

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1 new round of briefing and a new round of debates and  
2 discussion. I might very well, if necessary, have a hearing  
3 where we just go right down the list. This is this; this is  
4 this; this is this and tell you what I'm prepared to do.

5 But the more things that get resolved, the better. So  
6 my expectation will be to issue something in -- well in advance  
7 of June 30th and leave it at that.

8 So I want to thank you, particularly, and all the --  
9 your colleagues on your firm and for the thorough preparation  
10 and presentation in this argument. I don't mean to exclude Mr.  
11 Banner (phonetic) or Mr. Johnson or the committees or their  
12 counsel. This has been an enormous effort by a huge number of  
13 people working for their respective goals. And I am blessed  
14 by -- and burdened -- by their competence and thoroughness.  
15 And I'm doing my best to do what I can.

16 I am going to do, again, what I don't like to do. I'm  
17 going to decline further argument. I see hands that come back  
18 again from Mr. Abrams and Ms. Wallace. And now I see Mr.  
19 Etkin.

20 Mr. Etkin, again, I don't mean to be rude. I'm simply  
21 not going to reopen argument.

22 And Mr. Abrams, as I said before, you filed something.  
23 It's not an action item. If you take offense at something that  
24 someone said, I'm sorry about that.

25 And Ms. Wallace, much the same to you. I don't mean

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1 to minimize your situation, but I'm simply not going to  
2 interfere with my next job. And my job is to work through  
3 these very complicated, thoroughly briefed arguments and  
4 detailed documents and evidence and make a decision.

5 So I'm going to thank you all. I'm going to conclude  
6 the hearing and wish you well. And the ball's in my court to  
7 do what's next. Thank you for your argument.

8 MR. KAROTKIN: Thank you, Your Honor.

9 MR. TSEKERIDES: Thank you, Your Honor.

10 THE COURT: Thank you.

11 (Whereupon these proceedings were concluded)

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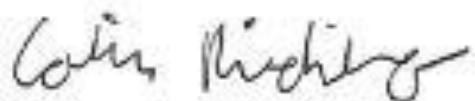
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1 C E R T I F I C A T I O N  
23 I, Colin Richilano, certify that the foregoing transcript is a  
4 true and accurate record of the proceedings.

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/s/ COLIN RICHILANO

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